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EDITORIAL

During the past century the literature dealing with sexual problems has passed through three distinct phases. The first was one in which sensational journalism competed with associations for moral improvement for the right to titillate or shock as much as instruct their readers. The second phase coincided with the development of sexology, a descriptive science, it is true, but concerned less with sensationalism and sin than with the phenomenology and classification of sexual activities. That these latter and praiseworthy efforts are now more than a little out of date is due to two circumstances; first, that the trend of modern psychology has been in the direction of uncovering the motivation of sexual disorders; and, second, that a new clinical science, namely, forensic psychiatry, has taken over the study and sometimes the treatment of sexual manifestations previously regarded merely as 'social offences.'

The study of prostitution illustrates convincingly these various phases, and Dr. Gibbens' paper in this issue is a model of the most modern and scientific method. Taking the view that it is important to preface the study of adult prostitution with an examination of young potential (larval) or actual prostitutes, he has made use of such information as can be gathered from the examination of a sample of girls passing through a remand home, and has been able thereby to correct some of the pseudo-scientific misapprehensions on the subject which abound even in the works of reputable sexologists. Naturally there are limits to the amount of information regarding predisposition that can be gained in this way; prostitution has many roots, some of which can be traced back to factors which affect also the development of both normal and neurotic women, as witness the prostitution phantasies of normal adolescents and the street anxieties of the neurotically inhibited. But working within his terms of reference, Dr. Gibbens has laid an excellent foundation for future studies in a wider field.

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In recent years there has been much research on the influence of the child-mother relation on future mental health in general and on the genesis of delinquency in particular. Spitz and Goldfarb studied the early behaviour responses of children to maternal care and separation. David Levy stressed the effects of over-protectiveness and John Bowlby gathered together the existing opinions and data (including much of his own, *e.g.*, the forty-five boy thieves) to emphasize in a categorical way the basic need for child-mother harmony. Its absence led in his opinion to the loveless character and the emergence of delinquency. On the other hand, the rôle of the father in dispensing love and security, as well as authority, appears to have been out of the focus of attention. Dr. Andry, in this Journal, has rightly re-opened this issue by statistically analysed questionnaires directed to parents as well as to the offenders.

The expression of parental love and its impact on the child has a complexity of a higher order because it has deep as well as overt characters. What may look like over-protection may be regarded by the growing child as an imposition or form of coercion, not an outgiving of strength, which is one aspect of the affectionate bond. Many a delinquent discloses, on closer and sympathetic inspection, passionate love ties which even devoted parents cannot always reciprocate without a strain on their own psychotic patterns. Resemblances between parents and children, as seen by the child, may be aspects of a complex identification process which has its ambivalent qualities emerging in this or that neurotic or character consequences. The intermittency of love, and its inconstancy, may have its very special repercussions on conduct. A child who cannot predicate parent attitude is left uncertain and ready to attain to certainty in divers ways.

At what level in the mental process is the child-parent relationship disturbed? Where are the plumb lines of investigation to be dropped to detect the level of neurotic, delinquent and normal structure levels? The father is seen in Andry's study as an important factor in the affection-maintaining process. His love and his authority are closely interwoven in character formation. It would be of the greatest value to break down our group of delinquents into sub-groups in order to ascertain in which sub-groups—the sexual, the rebel, the wanderer, the cheat and the thief—are we to find the mother-deprived or the father-deprived? Dr. Andry's paper is a prolegomena to further enquiries on these lines and, indeed, in any area where the psychopathologist and the observer of overt behaviour must join hands with the statistical student.

JUVENILE PROSTITUTION¹

By T. C. N. GIBBENS (LONDON)

Much of the present discussion about prostitution concerns young prostitutes. There seems to be anxiety not only that prostitution in general is on the increase, or is more flagrant, but that increasing numbers of young girls are involved. This has focused attention upon the management of wayward girls—girls under 17 who are ‘in need of care or protection’ or ‘beyond control’—and what more might be done to prevent girls of this age or a little older from becoming prostitutes. So it is relevant to consider prostitution as one sees it from a remand home for girls of under 17.

Those who have little direct experience often speak of wayward girls as if they were nearly all actual or potential prostitutes, but of course this is quite untrue. Most of these girls have been showing sexual behaviour which is disturbing to adults—they have been running away and living with boy-friends or have been promiscuous or been picked up by strange men in undesirable cafés, etc.—but, unless one defines the term very widely, in the vast majority there is no question of prostitution and no great risk of it. In practice these girls have a fairly clear idea of what they mean by being a prostitute, and their definition will do for us. It means to have sexual intercourse indiscriminately for payment, recognizing that this is what is being paid for. Many of course receive temporary protection and support from boys and some receive money for some emergency, but they would be quite rightly insulted by the idea that this was prostitution. Apart from a very few cases in which juveniles are arrested in brothels, it means street prostitution. In the social strata from which wayward girls usually come, prostitution is a familiar thing and is accepted as part of the social order. These girls are not so shocked and scandalized as the middle class; they seem to look on prostitution rather as the middle class look upon chronic alcoholism—that it is disgraceful but that some people may have rather compelling reasons for taking to it for a time, and that it does not involve complete social ostracism.

During 1953, I went through the records of 400 girls of 14, 15 and 16 whom I had examined in the remand home: 18 of them had been living by prostitution, however recently, at the time of their arrest—that is $4\frac{1}{2}$ per cent.

¹ This paper was read before the *Scientific Group for the Discussion of Delinquency Problems* on 19th September, 1956.

All girls of this sort would be remanded in custody for venereal tests, and I think a psychological report is nearly always called for. About the same number were arrested in the company of known prostitutes. This is certainly a dangerous situation but usually it does not mean that they have themselves been prostitutes. Prostitutes are friendly and generous people and often put up girls or boys on the run without trying to persuade them to become prostitutes or delinquents, at least for a time.

One might call this group the primary prostitutes. There was also a secondary group. The 400 girls—nearly all in need of care or protection or beyond control—were dealt with in various ways, sent to approved schools, training homes or put under supervision at home or in hostels, etc.; 185 of them were placed under supervision and therefore had some opportunity of taking to prostitution soon afterwards. With the help of the probation department we followed up the 185 cases and also a group of 57 girls put on probation for offences against property. Thirteen, or 5 per cent., of them had a period of certain or probable prostitution during the supervision and soon afterwards, and four others were possibly prostitutes for a time. So altogether prostitution does not figure largely in these girls' immediate problems.

The advantage of studying juveniles is that it is usually possible to get an accurate life history and some picture of their family; they are still willing to talk fairly frankly about themselves, although even at this age they tend to be more mature and reserved than other wayward girls. Nearly all observers have found that the adult prostitute tends to romance a great deal about her past or about herself, so that one cannot be sure of what is fact and what is fantasy. On the other hand, one cannot tell what relationship there is between juvenile prostitution and adult prostitution. We shall return to this question later.

At any rate we can be sure that several of the factors or so-called causes of adult prostitution mentioned in the literature are quite unimportant so far as juveniles are concerned. It is said, for example, that adult prostitution is due to economic necessity, to dull intelligence, to being lazy and to being highly-sexed or over-sexed. These factors do not have much significance for the juvenile. Considering the drabness of the lives of many of them, wayward girls are much less concerned about money than one would suppose natural. And although many are runaways without the price of the next meal in their pockets, only 5 per cent. take to prostitution. However, I think there is sometimes a type of emotional attitude to money which may play a part in later prostitution.

Moreover, juveniles are not lazy: they will travel all over England and dance half the night. Again, one sometimes sees a peculiar type of indolence

that seems to make it probable that such girls will drift into prostitution, but while they are juveniles they are usually too lazy to become prostitutes. And they are not particularly highly-sexed. They certainly do not have less than normal sexual feeling; later they usually have plenty of boy-friends and often get married young: but there is plenty of opportunity for a girl to be highly promiscuous without being a prostitute, or indeed ever coming near a remand home. If you talk to Borstal boys you find that they know a number of very promiscuous girls who are not prostitutes, and the boys usually say that these girls are living at home on good terms with their parents. Borstal boys, incidentally, hardly ever go with prostitutes, unless they have been in the Merchant Navy.

Clinical. When these primary prostitutes were reviewed, they fell into three groups. The largest group was composed of bright and sometimes highly intelligent girls who were extremely unstable. The second was a small group of four extremely dull and primitive girls, mainly of Irish or foreign extraction. The third group was a less defined one, nearer the average in intelligence and stability but with some psychological features in common.

We can dispose of the second or dull group fairly quickly. These are often represented to be the commonest sort of prostitute but they are the smallest group. Some are mentally defective but their low intelligence seems less important than their very primitive outlook. They are essentially uncivilized; wild, quite untrained and aggressive in a primitive way. They bite and kick the policemen who arrest them, have no sort of manners or idea of hygiene, and no idea that they are doing wrong. The moral and material standard of the home is extremely low and an aunt or sister is perhaps also a prostitute. Their wildness seems to be largely due to exasperation at being quite uncared for, and some of them do quite well in training homes.

Nowadays we see very few borderline defective wayward girls and the chief examples of this type of prostitute are the immigrant Irish girls who are left to run wild in Ireland while their parents come over here. When they follow, they find most of the family living in different places in England and they are bandied from one unsatisfactory household to another. The rate of prostitution among these Irish immigrants is said to be fairly high.

The largest group comprised eight intelligent and very unstable girls. The average I.Q. was 125 and they included some of the most intelligent girls that we have ever had in the remand home. They were very unstable emotionally and even after social recovery they remained liable to sharp changes of mood. Three attempted suicide at some time. Their backgrounds were very varied, but all were severely traumatic—illegitimacy,

adoption in a verminous condition, or abandonment by their real parents. In all there were great reserves of hostility and resentment. Several had subsequently been brought up by respectable but strict and unfeeling parents so that the hostility oscillated with a great deal of guilt and remorse—not for the prostitution itself but for having brought shame on their family. I think their high intelligence is an important feature because these girls have a clear conception of what prostitution is; they plunge into it quite intentionally as a form of moral suicide as if to say ‘This is as low as I can go.’ In some ways there was more truth in the Victorian idea of abandoned women than in the modern idea that prostitutes do it because they like it.

In his well-known pamphlet upon the psychology of prostitution, Glover² pointed out that, among other things, unconscious homosexuality was an important feature. I think this is certainly true—particularly in the third group of more normal and stable girls. But in these intelligent and unstable girls it is quite conscious. Four of them were overtly homosexual. One came to London with a passionately devoted friend and they prostituted themselves together in a way which expressed their relationship. One was reminded of those cases where a lesbian wife organizes an affair between her husband and her girl-friend. Another, whom I followed up for several years, later gave up being a prostitute and became the lesbian *souteneur* of a prostitute for a time. She told me, I do not know how truly, that she thought 40 per cent. of prostitutes have a woman lover rather than a man living on their immoral earnings. At one time (though not so much recently) we seemed to see an increase in the number of girls being led into considerable danger by association with lesbian clubs.

One of the few adult prostitutes seen at this time was a part-time prostitute who was liable to recurrent near-psychotic episodes which were accompanied by the emergence of pathological homosexual jealousy. At normal times she was not aware of homosexual feelings.

The third group—more normal in intelligence and general stability—had many psychopathological features in common with the more spectacular group. They included some who took to prostitution quite calmly and without warning and seemed to settle to it quite contentedly. One of them left home suddenly and became a prostitute at the age of 15 for fourteen months and had two convictions in an adult court before it was recognized that she was a juvenile.

The background and personality of these girls varied very widely but a common feature was that the girl had a strong attachment to a father who was inadequate and unable to deserve or support such attachment. Some-

² ‘The Psychopathology of Prostitution.’ Edward Glover. I.S.T.D. Publications.

times the mother's death allowed the girl to become a housekeeper to her father, who was however a cantankerous and difficult man. In one case the mother was a highly neurotic, ambitious and domineering woman married to a very easy-going soldier of much lower intelligence, whom she nevertheless goaded into rising to the rank of sergeant-major. The girl and her father were both easy-going people and they formed a close conspiracy to pay lip-service to the mother's ambitions but secretly to frustrate them. In many cases there is clear evidence of complete sexual maladjustment between the parents—they have perhaps never shared the same room since the girl was born—and sometimes the father's attitude is almost overtly incestuous or perverse in some other way.

In many there is no doubt an unconscious homosexuality, but what we see on the surface is an inability to feel any real affection for men, a fear of being dominated by them and a thinly disguised hostility and contempt for them; when they resolve their difficulties and get married they usually seem to be the dominant partner. If we wanted to multiply the mythological references we could say they have a Circe complex—a desire to turn men into swine. The attitude is beautifully expressed in the interesting autobiography of a prostitute³—‘To Beg I am Ashamed.’ One in the unstable group with homosexual tendencies owed her condition to a violent jealousy of her brother for being a boy: her whole life was built on the motto ‘Whatever men can do, I can do better!’ and she demonstrated that she was far more courageous, adventurous and unscrupulous, deliberately attacking any scruples she had because they represented a feminine weakness. These are some of the characteristics of known juvenile prostitutes. Those who were known to become prostitutes later showed many of the same characteristics.

It is difficult to know in what relation these juveniles stand to adult prostitution. They are exceptional and, as we shall see, most of them give it up quite soon. Moreover, many adults seem to begin prostitution in their early 20's. No doubt the outlines in the adult are blurred by chance events, by habituation, or by the gradual wearing down of the resistances which prevent the juvenile from taking to it more often. My own belief is that prostitution in women—like crime in men—is essentially a transitory phase in the vast majority, and that the habitual prostitute, like the habitual criminal, is quite exceptional.

But there are several groups of juveniles who appear to be in danger of becoming prostitutes in a few years; they show minor degrees of the same attitude. The first are those who will only associate with coloured men. As the coloured population increases, one sees more and more cases where a

³ Sheila Cousins, ‘To Beg I am Ashamed.’ London, 1953.

girl has formed a relationship with a thoroughly respectable coloured man. But for the most part the men we are informed of in the remand home are lonely, detached drifting people on the edge of crime. One of the reasons for their appeal is that they are more polite and respectful to white girls. These girls nearly always complain that English boys are too possessive and bossy; they show an early form of this fear of being dominated. Once in this underworld, quite a few seem to be urged to go out to part-time prostitution in the East End.

A second group consists of mercenary girls, who are so unlike the ordinary wayward girls. They are usually very good-looking, and know it. They have some of the usual emotional reasons for feeling very little affection and much contempt for men, and they soon appreciate what they can extract in the way of expensive outings and parties. They are usually not interested in being promiscuous, and will talk with real glee of leading foreign servicemen up the garden path. Some do very well under supervision; they are fairly hard-headed little gold diggers who are hardly in need of care or protection, but sooner or later make an advantageous match. But some have a strong emotional need to get money and favours in this way. Probably most of them get rich husbands but if things go wrong they might well become prostitutes later.

Lastly, there are the very indolent passive girls who do not seem to mind where they are so long as food and shelter are provided free. In some very deprived girls this indolence is an expression of chronic depression, but in some others the outlook for prostitution seems very grave.

I may perhaps refer to another small group who are not in real danger of becoming prostitutes but who cause some anxiety and difficulty. These are girls, usually from middle-class homes, who are fascinated by prostitution. They sit in cafés with prostitutes, and stand on the beat with them, but take no part themselves. One is naturally inclined to regard this merely as an expression of normal adolescent excitement with the richness of life—as one girl said, ‘It’s wonderful to think how different people are. There are rich and poor, aristocrats and commoners, lesbians and prostitutes’—or that it expresses the universal adolescent fantasies of being a prostitute. But they come alarmingly near to acting them out. In practice, these girls seem to persist in this behaviour till they are committed to an approved school. They respond to this very well and settle down most successfully.

Before leaving the clinical section I should like to mention two other associations with juvenile prostitution. First, an unusually high proportion have menstrual difficulties. On the whole wayward girls have much less menstrual trouble than average girls—for instance, those in the women’s services. But the prostitutes have trouble quite commonly. This may be

partly an expression of the difficulty they have in accepting their femininity. Secondly, it was surprising to find that two of these girls only took to prostitution when they became pregnant. One of them was arrested quite early and given every opportunity of being looked after properly by the local authority; but she absconded and again lived by prostitution until within a few weeks of being delivered, being convicted on one occasion in an adult court. Her outlook then changed quite sharply; she was soon considered quite suitable for a good foster home, settled down there quite successfully and married a respectable boy a year or two later.

These physical associations serve to emphasize, I think, that prostitution is really quite perverse behaviour, and far from being merely a matter of convenience.

Subsequent History. Through the courtesy of the Probation and Children's Departments of the Home Office it was possible to follow up nearly all of the original 18 cases. This information can be compared with the results of a follow-up of 185 girls put under supervision; 13 of them, it will be remembered, became prostitutes for some period during or immediately after supervision.

The follow-up results were classed as success, failure, or doubtful. It is difficult to find a satisfactory criterion since, after the age of 17, a girl cannot be brought to the court as being in need of care or protection, even if she deteriorates sharply. The standard must be a general social one and rather subjective. It was based upon the views of the probation officers themselves as to whether there had been deterioration; on a question whether further steps would have been taken if the probationer had been under 17; and upon my own judgment of the detailed history provided. Success implied that the girl was in steady employment, was living with her family or under settled circumstances, and was not apparently being promiscuous. A doubtful result was sometimes due to lack of enough information but more often to definite information about erratic progress. However subjective, the same standard was at any rate applied to those who had been prostitutes and those who had not.

One difficulty in judging the history of this type of girl is that a good many have rather chequered careers for some years and it is difficult not to be unduly influenced by the most recent report. In one case one may hear that the girl is travelling about with a married man with a criminal record, and in another similar case the last news is that this relationship has ended and that she has returned home, has had a steady job for six months, appears much more settled and has a respectable boy-friend.

The result of this follow-up of 185 supervision cases was that 34 per cent. were regarded as successes, 25 per cent. doubtful and 41 per cent. failures.

In 61 per cent. of the failures, the girl had been brought back to court and sent to an approved school. Ten of the 18 original prostitutes were put under supervision and therefore had some freedom of action; 3 of these were outstanding successes, 6 were doubtful and 1 a failure. Of these 10, 4 never reverted to prostitution: 3 of these did very well, 1 becoming a charge nurse in a hospital and the others doing responsible work. Two reverted for a time, but later gave it up apparently for good, and 1 turned out quite successfully. Three reverted to it, gave it up later but remained unstable and might later return to it. One evaded supervision and was never traced. The remaining 8 original cases were sent to approved schools or committed to the care of councils. Two of them could not be traced, 1 was successful after approved school training, 1 doubtful, and 3 failures—2 of them being sent to Borstal from the approved schools and 1 being ultimately certified as defective. Lastly, 13 of the 185 supervision cases took to prostitution at some time during supervision or just afterwards, usually after running away from home or from a hostel. Ultimately 2 were considered successes, 2 doubtful and 9 failures. The main reason for the large number of failures may well have been that the period of prostitution was the last item of news about them, perhaps as a result of a police report some time after supervision ended, so that it was inevitable that they should be regarded as failures.

All things considered, there is little to suggest that the outlook for juvenile prostitutes is any worse than for other wayward girls. The main feature is that there is a wide range of personalities in the group. If one wanted to point to wayward girls for whom supervision had been an abysmal failure or the most gratifying success, one would look among the juvenile prostitutes. The highly intelligent but unstable girls are the main source of these outstanding successes and failures but some stable girls who appear quite settled to the life can do equally well. One girl of 16 had been a prostitute for fourteen months and appeared quite settled. She was sent home under supervision, largely because it seemed hopeless to try to influence her. However, she held a job for six months, then reverted to prostitution for a few weeks, and finally remained in steady employment for four years, partly as a nurse.

Prostitution at this age or a little older is nearly always a transitory phase, unlikely to be permanent, but rather likely to recur temporarily in a time of crisis. It is an open question whether this is also true of adult prostitutes. Among those who did well there were a number who became nurses. No doubt this was partly due to high intelligence but it is tempting to suppose that in a highly sublimated and valuable way nursing provides a particularly suitable emotional outlet for these girls. Nurses, like prostitutes, see men at their weakest; they have to endure the sight of blood and suffering,

and it is a profession which still demands self-sacrifice. One might suppose that the armed forces would exercise an appeal. Some of these girls contrast their usual shyness with the self-assurance and 'brazenness' which they feel when made up for the streets. The anonymity of a uniform might have attracted them. But none of these girls was known to have entered the women's services.

It is not my purpose to discuss what could or should be done to prevent adult prostitution. Indeed it is uncertain what relation these juveniles bear to adult prostitutes. In a recent study⁴ there was much to suggest that many adults began prostitution only in their early 20's, and from what has been said about the psychological background one might suppose that it would arise most often later on, when the full consequences of sexual maladjustment had become apparent. Many of these wayward girls may have ultimately taken to prostitution five or six years after supervision or after approved school training.

In dealing with juveniles, however, it is clear that prostitution does not carry such a hopeless prognosis that they are not suitable for supervision. Each case has to be considered on its merits, and in both the recommendations made and the action taken by the courts, all the facilities open to wayward girls are used appropriately for the prostitute. Prostitution is a serious matter but it does not itself point to any particular type of treatment.

It is also fairly clear that to take further preventive action by raising the age at which care or protection proceedings can be taken, in the present framework of the law, would be to take action against 95 per cent. of wayward girls for the sake of 5 per cent. who are in immediate danger of prostitution. However, it is distressing to see a girl of 17 gradually deteriorate in health and character as a prostitute while the police are powerless to intervene. After the age of 21 it might not be possible to do so much, but the main problem in this field, it seems to me, is whether something new could be done for prostitutes between 17 and 21. If it were possible to arrest these girls and remand them in custody for two to three weeks, this alone might be a great help, especially if the remand centres which the Criminal Justice Act laid down for this age group are opened so that they do not have to go to adult prisons; and if they are staffed so that full physical, social and psychiatric examinations could be made. I believe that in many cases relatives could be contacted and plans made which would persuade these girls to give up prostitution, under supervision. Many believe that the recalcitrant ones and those who refuse help should be sent to some sort of closed institution or probation home. It might help to have some sort of sanction like this in

⁴ C. H. Rolph (Ed.), 'Women of the Streets.' London: Secker and Warburg, 1955.

the background but, if voluntary or persuasive methods failed, I doubt whether compulsory and prolonged institutional treatment would have much effect, except with carefully selected cases. In fact, with unco-operative girls, it might make the outlook worse by depriving them of a chance of finding a respectable husband or learning to keep an ordinary job.

We are referring here to changes which might be made within the framework of the present law. But a Departmental Committee has now been set up to consider the operation of the juvenile courts. No doubt it will consider the present trend in many countries to raise the age of jurisdiction of the juvenile courts to 21, or at least provide an option to deal with some boys or girls up to 21 as if they are juveniles. If changes of this sort are made in this country, then it might be possible to care more adequately for the needs of these under-21 prostitutes within such a system.

ANNOUNCING

A Special Number on Probation

JANUARY 1958

The Forty-fifth Annual Conference of the National Association of Probation Officers was held in London from 3rd to 5th May, 1957, to mark the Jubilee of the passing by Parliament of the Probation of Offenders Act, 1907. In view of the significance of this Fiftieth Anniversary, the Editorial Board has decided to publish a Special Number of the Journal dealing with the subject. This will include a number of original papers and notes on different aspects of

Probation, together with reviews and abstracts of recent literature.

For the convenience of those who are not regular subscribers to the Journal individual copies of the Special Number will be available, price 10s. 6d. Application should be made to the I.S.T.D., 8 Bourdon Street, Davies Street, London, W.1, or to Baillière, Tindall and Cox, 7 and 8 Henrietta Street, London, W.C.2.

MAGISTERIAL POLICY IN THE LONDON JUVENILE COURTS

BY HERMANN MANNHEIM, JOHN SPENCER
AND GEORGE LYNCH (LONDON)

INTRODUCTORY ¹

While the causes of juvenile delinquency and its method of treatment have been the occasion for numerous researches, the study of the sentencing policy of the juvenile courts has been comparatively neglected. On both sides of the Atlantic students from different disciplines working in the general field of criminology, and using a variety of methods, ranging from the detailed examination of a small group of case-histories to the statistical examination of larger numbers of delinquents, have contributed to our knowledge.

The various branches of the penal and reformatory system, now increasingly differentiated through the growth of systems of classification, have been described and criticized, both through official sources and by private observers. The treatment or sentencing policy of the juvenile court, on the other hand, has received less attention, and until recently no attempt appears to have been made to examine the general principles (or the application of these principles within the framework of the courts) underlying the selection of various methods of treatment for different types of offenders.² For our part we can claim no more in this research than to have made a beginning, while the limitations of our study will become clearer in the course of successive sections.

The absence for so long of any attempt at a scientific study of sentencing or treatment policy—we shall use the latter phrase as being more applicable

¹ The research described in this paper was financed jointly by the London School of Economics and Political Science (University of London) and the Home Office through a grant made to the two first-mentioned authors, who are greatly indebted to them for their help which made it possible to employ Mr. George W. Lynch, M.Sc. (Econ.), as research worker. Moreover, the London School of Economics and Political Science placed at our disposal the services of their statistical machines, while the Home Office provided typing assistance. We also wish to express our thanks to Mr. C. P. Hill, C.B.E., Mr. R. J. Whittick, Mr. T. S. Lodge, and Mr. L. T. Wilkins, of the Home Office, for their valuable advice which was freely given at various stages of the enquiry.

The research, which was commenced in November, 1952, and completed in 1955 (see the scheme in *Brit. J. Delinq.*, Vol. IV, p. 199), is based on the study of the records of a random sample of 400 young delinquents (boys in the age group 14–17), charged with larceny in the Metropolitan juvenile courts during the year 1951–52. We are particularly grateful to the Chief Metropolitan Magistrate for permission to use these records and to Mr. L. G. Banwell, then Chief Clerk of the Metropolitan juvenile courts, for kindly placing these records at our disposal.

² We regret that Dr. M. Grünhut's book, 'Juvenile Offenders Before the Courts' (Oxford, 1956), in which such an attempt has been made, did not appear in time for us to take note of his findings in our research and in the preparation of this paper.

in the context of the juvenile court—is less surprising in the case of the adult offender than of the juvenile delinquent. For the adult offender, the problem of deterrence still arises, and the concept of individualization,³ that is to say, the application of a sentence appropriate to the ‘personality and personal circumstances of the offender’, is only one consideration among others. For this and other reasons the research into sentencing policy in the adult field is likely to show wide variations in court decisions unrelated to the needs of individual offenders. Writers on this subject, such as the late Sir Leo Page, tend not unnaturally to concentrate on the effects of different penal methods on the criminal rather than on the application of principles by the courts. That wide variations do in fact exist will hardly be disputed.⁴

But in the case of the young delinquent this neglect of the treatment policy of the juvenile courts is more surprising. The primary function of the juvenile court is to consider the welfare of the child, and this aim clearly requires the fitting of the court’s decision to the individual needs of the child. It therefore seems that there is a case for empirical studies of the decisions which existing juvenile courts have actually made as a first step in the analysis of the principles underlying the treatment of young offenders.

Nevertheless, good reasons may be advanced to explain the comparative lack of research in this field, too. Firstly, there is the argument that ultimately the decisions of magistrates in the juvenile court, or indeed in any court, must be determined by the unique characteristics of the individual offender and that individual circumstances must decide the appropriate treatment. Secondly, there are the facts, often of quite decisive importance, which remain unreported in the court records, but which were given orally to the magistrates at the time of the boy’s appearance in court, such as the remarks of a probation officer or the opinion of a parent. Consequently it is argued that a study of records can give only an incomplete account of the facts leading to courts’ decisions on treatment, since an essential piece of information may be known only to the magistrates and remains concealed from the research worker. Thirdly, and closely connected with this, there is the general demeanour and manner of the boy and his parents in the court during the hearing of the case. Valuable as the informal notes on each case made by the Clerk of the Court have in our case proved to be, they cannot be expected to contain all the details regarding the boy’s attitude and manner. The courts might also have been influenced by the general delinquency situation in the court areas at the time. Though the welfare of the child remains the

³ See H. Mannheim. ‘Criminal Justice and Social Reconstruction’ (London, Routledge and Kegan Paul, 1946), p. 228.

⁴ *Ibid.*, pp. 229–230.

primary aim, we cannot exclude the possibility of deterrence or, on rare occasions, even of an exemplary punishment. In the period of our research, for example, the offence of lead stealing had become prevalent, and some courts may well have felt that boys found guilty of this particular kind of larceny needed severe punishment. Moreover, not all the measures at the disposal of the juvenile court can be properly described as treatment. The attendance centre, for example, or the detention centre, or detention in the remand home have a punitive function. Approved schools also, in spite of all that is said about their re-educational function, are at times used as a method of punishment.⁵

In addition to these quite specific arguments against any examination of juvenile court decisions, there is the well-known general dislike of those methods which attempt to study human behaviour in terms of scientific principles. However, to admit the strength of these arguments against research into juvenile court decisions is not necessarily an excuse for inaction. Rather is it a spur to further work and to improvements in methods. In this research there is no question of criticizing the wisdom of particular decisions. The aim is simply to examine the extent to which uniformity in decisions by courts may be observed in a random sample of cases in one particular area. While the research worker had the disadvantage of not being present at the court hearing, and thus of not sharing in all the observations of the magistrates, he did have the advantage of detachment. To him the courts remained, as later sections show, merely numbers.

Our sample of 400 cases was subdivided, as we shall describe later, into sub-samples of fifty cases appearing before eight courts.⁶ This included four courts sitting in separate buildings. The other four courts consisted of two pairs, each of which used the same building and covered the same geographical area. By confining our analysis to the decisions of eight courts sitting in six London juvenile court houses we cannot avoid one difficulty inherent in our study which deserves to be mentioned, namely the changes in the composition of individual courts. Although we know that the Chairman of each court was present at the hearing of all the cases appearing before the court, we cannot be sure that there was no change in the composition of the other two magistrates. Nevertheless in all research of this kind it is necessary to draw a line at some point and it would have been quite impossible to assess the variations in magisterial policy arising out of different combinations of magistrates.

⁵ Cp. P. D. Scott, 'Residential Treatment of Juvenile Delinquents', *Brit. J. Delinq.*, 1951, 2, 8-9.

⁶ It is important to be clear as to the use of our definition of the 'court'. In this paper we take it to mean a chairman magistrate sitting with two other magistrates and constituting the bench.

At a later stage we hope to follow up our sample of 400 boys and to assess their subsequent histories in the light of the juvenile court decisions which are examined in this paper.

OBJECTS AND METHODS

Cases in our sample of 400 boys were distributed over all the London courts and dealt with by several magistrates, and it was of interest to enquire into the likelihood of all the courts tending to apply the same types of court orders to the same types of offenders. Thus, if case 'y' had appeared in any of the courts included in the study, could it be shown that court order 'x' would have been the probable outcome of the court appearance? There was no difficulty in recognizing the different kinds of court order. It was more difficult to recognize cases, however, in which the circumstances of the offence and the offender were so similar that we might have expected all courts to prescribe a similar form of treatment. In essence the task was to establish the uniformity or non-uniformity of those factors which were significant to the study. Types of offences, previous court records, etc., are obvious examples of important factors. As has been remarked, the general appearance or demeanour of a defendant might also be important, but not obvious to a research worker who was not present at the court proceedings and who found no reference to appearance or demeanour in the court file.

The need for a selection process was apparent, but the fundamental problem remained—what constituted a classification of essentially significant factors? The main purpose of the study was to assess the uniformity or otherwise of court decisions made by certain courts in a particular area. These courts considered data applicable to each individual case and thereafter applied a court order thought to be the most effective in the particular case. Was the same type of court order applied to the same class of case? Not for one moment was the study concerned with good or bad judgments but only whether like causes had like effects. What factor or combination of factors guided a court, for example, to the ultimate decision of a probation order rather than one of conditional discharge? Was this association automatic and one in which all courts were in agreement?

The next step in attempting to resolve the problem was to appraise the sources from which the court obtained information and impressions and which included those significant factors on which they might base their decisions. Data supplied by the police, special officers (*i.e.* those representing local authorities), probation officers, psychiatrists and others were available. The police and special officers automatically present their information and other experts may be called upon to investigate the particular case as and when the need arises in the opinion of the court. Factual, diagnostic and

remedial information and suggestions embodied in reports will also indicate the different levels of importance attached to the factors included in the information. These weightings are based on the knowledge and experience of the specialists who produce the various reports. However, in turn, a court may wish to interpret the data by the standards of its own experience. Magistrates may come to believe that a particular branch of science or opinion is almost always on the point or off it. They may think that a particular approach is helpful in the understanding of some form of delinquency, but not in others. Again, they may become convinced that certain personalities in the various fields of enquiry are effective whereas others are not. It is apparent, therefore, that in addition to the data considered by the court, the court's experience is an additional source of information or direction.

The court's decision inevitably depends not only on the information that is put before it, but also on the experience and the judgment of the magistrates themselves—and these elements are not susceptible of measurement. It might be possible to demonstrate the extent of the part they play by examining those cases which the court decides without asking for further reports about the offender, or where the court's decision does not coincide with any recommendation that may be made in the reports that are before it. But it must not be assumed that these elements play no part, or a less significant part, in the court's decision in cases where the court calls for reports about an offender and appears to act on their recommendation. For it may be that the person who submits the report can predict what the court's attitude to the case is likely to be, and himself adopts that attitude. Or the court's decision may coincide with a recommendation made in a report, although its reasons for the decision are different. As already stated, there were available to the court objective data and technical opinions from which it could draw conclusions and reach decisions. For the purpose of establishing a standard by which both conformity and non-conformity could be measured, it was assumed that identical reasoning and decisions would be applied by each and all courts to identical patterns of information. This was resolved into the fundamental hypothesis to be tested in this study. This hypothesis stated *that there was consistency in the adjudications of the London juvenile court.*

Consistency or otherwise in court decisions could be best assessed by comparing cases which were as nearly alike as possible. The cases coming before the juvenile courts can be classified in various ways—e.g. by age groups, into offenders and non-offenders, by the kind of offence, by the means by which the case comes before the court. For the purposes of the investigation it was necessary to select a group of cases having as many attributes as possible in common. As the number of common attributes required in order

to qualify for selection was increased, so the number of cases qualifying for selection diminished, until a point was reached beyond which the process of elimination could not be continued without bringing the number of cases below the minimum required for statistical investigations.

In the year ended 31/3/'52, 5,638 boys and 1,021 girls came before the London juvenile courts. Approximately half of these had been arrested in connexion with a criminal offence, and the rest appeared in court in answer to a summons or in non-criminal cases where no summons had been issued. The last two categories, and all girls, were excluded from the sample, so that all those left were boys who had appeared in court after arrest charged with a criminal offence.

Larceny was the largest single class of offence, and this was selected with the additional modification of eliminating all boys below the age of 14 years. Thus, the numbers were now reduced to 979 boys over 14 and under 17 years who had been charged with the offence of larceny. A sample of fifty boys found guilty by each court was thought sufficient, and all London juvenile courts which had dealt with fifty or more such cases during that year were included in the project. Eight courts qualified and in order to prevent recognition each court was given a number. The following table shows the total number of such cases and the percentage of the cases contributed by each court:

TABLE I

<i>Court</i>	<i>Proportion of total case load sampled for each court</i>	<i>Total number of cases as defined</i>
	%	
1	91	55
2	64	78
3	28	181
4	57	87
5	28	177
6	64	79
7	91	55
8	43	116

The fifty individuals in each sample were chosen by random selection, using numbered tickets. All the offenders selected were boys, all were over 14 and less than 17 years of age, and all had committed the same type of offence; but there were still differences between them. Some were under 15 and still at school, while others had left school and gone to work. Some had committed 'simple larceny' while others had committed offences described

as 'larceny by servant' or 'larceny from the person' or 'larceny in a dwelling house'. Many had stolen goods whereas others had taken money; some thefts had involved values measured in hundreds of pounds and others amounted to a few shillings. In addition, there were other important differences applicable to various individuals in the sample. Gang members, companions in crime and lone offenders were included. Some were sophisticated offenders with previous records, others were appearing in court for the first time, perhaps for trivial offences. The sociological and psychological information available in the different cases varied both in character and in quantity. It was assumed that in the case papers was information which, as interpreted by the courts, revealed significant differences between the cases. How were we to select the factors that were most likely to have been significant? It was obvious that any analysis of the cases must take account of the differences between individuals in terms of whether some had previously offended, and further, the variations in the numbers of times earlier offences had been recorded. Perhaps this aspect might ultimately indicate a pattern of more severe treatment for those with previous court histories. On the other hand, it was necessary to assume that often variations in decisions were probably based on rather more subtle factors, and to the extent that these might exist they had to be included in the system of case analysis.

In the early stages of the development of the study, a pilot sample was selected from all the files kept in the offices of the London juvenile courts. It was examined to ascertain the sources of information concerning the individual and the extent and quality of the data. This investigation indicated that complete legal and administrative details concerning cases were likely to be available in the majority of the files. This information was included in the notes made by the Clerk of the Court and, in any case, the court registers could be used to supply any information in this category which was not included in the case records. However, it was apparent that the same completeness was not likely to occur in the social and psychological data. In some cases courts might not require further information in addition to that given by the police and the special officer who imparted his knowledge orally. In these circumstances the file would probably contain only a single sheet of paper on which the Clerk of the Court had made his notes. This situation was frequently met with on those occasions when courts adjudicated on 'first hearings'. Further, not all investigators reporting to the courts would include the same points in their assessments of social and psychological data. In other instances where, perhaps, the probation officer was quite familiar with an individual appearing in the court, only an oral report would be made.

It will be clear from these considerations that it was impossible to attempt

to establish a series of factors based empirically on the contents of the court files. First, there were enormous differences in the file contents, both in terms of quantity and varieties of data. It was not possible to say that any type or individual file was a 'master' by which others should or could be judged. It was equally impossible to use as an analysis an addition of all the types of information spread over the 400 files. This would mean that specific types of information required by or habitually reported to certain courts and not applicable to others would, by omission, bias the distribution of 'information sought' over the remainder. Thus, while the establishment of what might be or might not be significant factors depended entirely upon the opinions of the magistrates, it was neither possible nor logical to establish that information required or given in one court was a valid criterion necessary and significant to all courts.

In an effort to overcome these problems it was finally decided to design a synthesis of what were thought by the research worker to be all possible fields of enquiry which might be relevant to those cases appearing in the juvenile courts. The number of questions which could be asked was limited, however, by the capacity of the punched cards used. The complete schedule was made up of three parts: (a) legal and administrative; (b) sociological, and (c) psychological. With this prepared, the procedure was to extract available information from each sample case and fit it under the different headings.

PATTERNS OF COURT DECISIONS

If consistency in sentencing policies is assumed, then it seems to follow that each court would order more drastic treatment in proportion to the number of more serious cases appearing in its sample. Although the proportions of different types of court orders might vary between different courts, consistency would appear in the relationships between the types of cases and the classes of court orders. Court 'A' might include 60 per cent. of the less drastic court orders in the total number of decisions; court 'B' might include only 20 per cent. This would confirm expectation if the cases that came before court 'A' included 60 per cent. of trivial offences, whereas court 'B' had only 20 per cent.

No matter how varied the individuals appearing before the courts, the varieties of treatment available are comparatively few. The sample included twenty-nine different types of court order, which were placed into three broad categories: (1) Discharges. (2) Probation orders. (3) The remainder.

Approximately 30 per cent. of the orders were discharges, 44 per cent. were probation orders, and the remaining 26 per cent. were fines, attendance centre orders and approved school orders, etc. Comparisons between

courts were based on these three categories because more refined variations, e.g., comparisons between conditional discharge with costs and the binding over of parents, resulted in numbers too small for any statistical significance.

It is not possible to set up any objective standard of treatment which would universally be regarded as 'correct' or 'best' for any particular case. Nor can we lay down any fixed policy of sentencing which would be regarded as the correct policy. There was no question of describing as 'incorrect' the treatment pattern of a court that departed from any standard of comparison (say, for example, national averages). We must seek a value-free method of comparison which will enable us to discuss our problem of treatment policy. It appears, then, from the above and in view of the nature of the data which it is possible to collect in this field, that we may begin to discuss the possibility of discovering such a policy only if we are able to group our courts in some way. We shall then have to examine the cases coming before these courts and study in what ways they varied, and whether these variations might be explained in terms of a distinct policy. *We thus assume that any one court of our sample, considered in the first place, singly, had a treatment policy; and that whatever that policy might be it would be evidenced in the sample of cases we should study.* We do not define what we (or others) might mean by 'treatment policy' except in these operational terms: what we observe; the way cases are disposed of; the pattern of the Court Orders made; this, we say, reflects the policy concerned. Our design does not include differences 'within' courts but only between them. We might have considered various forms of possible 'within courts' variations. For example, whether there was any difference between the disposals of similar cases before and after lunch, or between days of the week or when one particular case follows another type of case, and the like. All such 'within' differences are excluded from this study and, if they exist, they are part of the court's 'policy' as operationally defined. We are concerned only with variations between policies. Let us consider, then, the treatment policy of one court and attempt to find out in what ways other courts in the sample follow or diverge from this same policy. If we find that orders do not follow the same policy, we shall seek to explain why this is so. Obviously there are some explanations which are consistent with the hypothesis of a treatment policy common to all courts, and some which are not. The first, and main reason, would be if we were to discover that the different types of cases coming before the different courts explained any deviations from the common policy defined in the first instance with this fact omitted. Thus, we do not compare any court's treatment with any subjective assessment of what is 'right and proper' treatment to award in any case or types of case, but merely the decisions of one court with another.

There is no doubt that the treatments given by the different courts in our sample varied widely. The basic data are shown in Table II.

TABLE II
Types of Court Order Made

<i>Court</i>	<i>Discharge Orders</i>	<i>%</i>	<i>Probation Orders</i>	<i>%</i>	<i>Remainder</i>	<i>%</i>
1	15	30	28	56	7	14
2	11	22	30	60	9	18
3	20	40	9	18	21	42
4	9	18	20	40	21	42
5	11	22	25	50	14	28
6	24	48	15	30	11	22
7	24	48	22	44	4	8
8	12	24	33	66	5	10
	126		182		92	

A cursory inspection of this table will reveal many differences. For example, taking probation and discharges together, courts 3 and 4 do not resort to these two so often as the other courts. It will also be seen that whilst these two are similar in this respect, none the less they differ in their use of both probation and discharge when we consider these separately. Again, by inspection, it will be seen that discharges appear more frequently to be ordered by both 6 and 7, whilst 3 was similar to them in this respect, but different in respect of other treatments.

This sort of simple assessment of the ways in which the sampled courts may be said to be similar to or to differ from each other gives us a clue to the method of classification which we propose to adopt. But there are several methods which meet this requirement of classification of the courts according to the types of treatment which they are inclined to award. We might, for example, assume that the average of the sampled courts gives the best assessment of 'policy', and we could discuss each in terms of difference from the average of all. This is not, we believe, the best method, but it is instructive to make this simple sort of classification before proceeding further to any more complex analysis. If we ignore the degree of deviation from the average and merely indicate for each court whether it is above or below the mean, we derive the following pattern of results:

TABLE III

<i>Court</i>	<i>Discharge</i>	<i>Probation</i>	<i>Remainder</i>
1	—	+	—
2	—	+	—
3	+	—	+
4	—	—	+
5	—	+	+
6	+	—	—
7	+	—	—
8	—	+	—

We may now group those which showed the same pattern of deviation from the average of all those sampled, thus:

—	+	—	1, 2, 8
+	—	+	3
—	—	+	4
—	+	+	5
+	—	—	6, 7

The major objection to the use of deviations from the average is that it makes something like an 'objective' comparative standard, and, quite obviously, there is no single court which is the 'average'. We cannot discuss with any real meaning the idea of a treatment policy which is related to the 'average' treatment of cases on disposal. We wish to classify courts so that we may say that the policy of court (*x*) differs most from the policy of court (*y*), and is most similar to (*z*). We may make this classification only in terms of the methods of disposal of cases. Let us suppose that we may simplify the categories of treatment even more drastically than we have in Table III, and that we may discuss the various forms of discharge and the rest. Discharge is not, it may be argued, a 'treatment'. Let us then compare the 'policies' with respect to the dichotomy treatment/no treatment. In these simple terms we may compare every court with every other directly by considering whether, say, court (*x*) discharged more or less cases than (*y*) or (*z*) for all possible comparisons. The results of this analysis are given below in Table IV.

TABLE IV

*Showing Differences between Numbers of Cases Discharged*⁷

	Reference Number							
	1	2	3	4	5	6	7	8
Ref. No.								
1	—	4	— 5	6	4	— 9	— 9	3
2		—	— 9	2	0	— 13	— 13	— 1
3			—	11	9	4	4	— 8
4				—	— 2	— 15	— 15	— 3
5					—	— 13	— 13	— 1
6						—	0	12
7							—	12
8								—

It will be seen that by adding (ignoring signs) over all cells for each court we get another measure of the degree of difference between the treatments allotted. In this case we are not making assumptions about averages in quite the same way as before. Addition gives the following differences:

Reference numbers 1 and 8 total 40

2 and 5 42

6 and 7 66

3 50

4 54

This result is not very different from that based on the difference between each court and the average. In that case 1, 2 and 8 were similar, and so were 6 and 7, whilst 3, 4 and 5 were different from others and from each other.

Both these methods have limitations. The average is, as we have remarked, an unreal concept which we would prefer to avoid, whilst the limited classification which takes into account only two categories of treatment—or more correctly treatment as compared with no treatment—does not use all our information. We eventually resorted to a system of classification by means of factor analysis, and since the results were similar to the simpler methods, but used more of the data, we propose to use this as the basis for further analysis.

⁷ Since the sample drawn from each court's case load was the same size, we may use absolute figures and derive the same results as if we used percentages. To assist in the reading of this table some examples may be given. Consider, for example, the figure 9 in the row against court 3; this means that court 3 discharged nine more cases than court 5. Similarly it discharged four more than did either 6 or 7.

The groupings derived by this method were:

Reference numbers 1 and 8
2 and 5
6 and 7
3
and 4

We shall accordingly expect to find differences between the types of case appearing before these courts as grouped, since otherwise it is difficult to assume that a rationale of sentencing exists at the present time.⁸ Again, it should perhaps be emphasized that no assumptions are to be made as to whether one court is issuing orders which are 'right and proper' whilst others are not. We are discussing only differences, and not making any value judgments in this analysis.

This pattern of association could have resulted from—or have been modified by—factors extraneous to the sample court populations.

There were six separate court buildings. Of the eight courts, four occupied four of these and the remaining four courts occupied the remaining two buildings. The four which sat in separate court buildings were in fact combined into two of the pairs in the pattern. Two which sat in the same building also appeared as a pair in the pattern and the remaining two which sat in the same building were isolated in the pattern. From this, it could not be said that the associations between the various courts depended to any significant extent upon the area where the court was situated.

Five of the chairmen of the courts were men and three were women. One of the combinations in the pattern included a chairman of each sex and the two remaining women chairmen were associated in another of the patterns. They also sat in the same courthouse. Thus, two of the five men were excluded from all the combinations and were isolated from each other, two formed one of the combinations and the fifth man and one woman made up another of the combinations. The two remaining women chairmen were associated in one of the combinations in the pattern. Thus the sex of the chairman does not account for differences or similarities in the pattern of treatment.

It still remained that the pattern of association might have been partly or wholly accounted for because certain courts dealt with offenders drawn largely from a particular social class while others dealt with those from different social levels.

The six court areas in London for which the eight courts function together cover the area of the twenty-eight London Metropolitan Boroughs.

⁸ The classification is based on the nature of disposals of cases in the sample.

These boroughs do not fit evenly into the court areas, but are sometimes partitioned between them, and the policy was to allocate the borough to the court area in which the major portion fell. This produced the following allocation of boroughs to court areas:

<i>Court</i>	<i>Metropolitan Boroughs</i>
Chelsea . . .	Chelsea, Holborn, Westminster.
Friends' House . .	Finsbury, Islington, Hackney, Stoke Newington.
Lambeth . . .	Camberwell, Lambeth, Battersea, Wandsworth.
S.E. London . . .	Bermondsey, Southwark, Deptford, Greenwich, Lewisham, Woolwich.
Stamford House.	Hampstead, Paddington, St. Marylebone, St. Pancras, Fulham, Kensington, Hammersmith.
Toynbee Hall . .	Bethnal Green, Shoreditch, Poplar, Stepney.

The Census 1951 (Report on Greater London, 1956) classified the status groupings in each of the Metropolitan Boroughs. These social class groups were based on occupations classified as (1) professional and managerial; (2) supervisory, clerical, etc.; (3) and (4) manual workers (skilled and semi-skilled); and (5) unskilled labourers. The total numbers in each group for the boroughs in each court area were brought together and expressed as percentages in the following table:

TABLE V

<i>Court Area</i>	<i>Social Class Groups</i>				
	1 %	2 %	3 & 4 %	5 %	Total %
Chelsea . . .	10.8	17.6	57.9	13.7	100
Friends' House . .	1.6	10.4	71.5	16.4	99.9
Lambeth . . .	2.9	12.7	68.5	15.9	100
S.E. London . . .	2.2	10.4	64.8	22.6	100
Stamford House . .	7.4	17.1	61.1	14.3	99.9
Toynbee Hall . .	.6	6.5	66.3	26.6	100
Average . . .	4.2	12.5	65.0	18.2	

This table reveals that there are certain significant differences in the distributions of the social class groups over the six court areas. Relatively high proportions of managerial and supervisory grades are found in the court areas of Chelsea and Stamford House and the rest are about the average, with the exception of Toynbee Hall, which is noticeably deficient in

proportions of the higher social class groups. The lower social class groups take up relatively high proportions in the court areas of Toynbee Hall, S.E. London and Friends' House and, naturally, show low ratios in Chelsea and Stamford House.

Any relationship between social class analysis and the court samples is complicated by the fact that the offender is charged to appear in the court of the area in which the offence occurs, and not in the area in which he lives. This means that it was possible for perhaps a high proportion of offenders appearing before a particular court to have come from a different court area and, consequently, to have no relationship to any social class analysis of the court area. However, a statistical analysis of the sample showed that, after excluding a little more than 12 per cent. of the cases in which no information appeared in the files about the area in which the offence occurred, 60 per cent. of the remaining cases occurred in the home or school district. These, with very rare exceptions, would fall into the area of the court in which the case was heard. A further 16 per cent. offended in the 'area of employment' and 24 per cent. elsewhere. It is probably generally true that many youths tend to find employment locally and it could be assumed that a proportion of the 16 per cent. employed in court areas also lived in them. It is also probable that some of those included in the 'elsewhere' category resided in the same court area because this classification simply covered offences in places other than the home, school, or employment districts. Therefore, where the relevant information was known, the majority of the offenders lived in the district in which the offence took place. The Chelsea court area proved to be the exception to this general conclusion. Here, only 28 per cent. offended in the home or school area, 22 per cent. in the area of employment and 40 per cent. elsewhere. This, no doubt, follows from the fact that the Chelsea area includes most of the West End of London and all that can be inferred from the concentration of shops and places of entertainment to be found there. In fact, the Chelsea sample included the highest number of offences against the owners of 'shops, stalls or stores'. Apart from this last court area, the samples from the various courts can be said to have been drawn largely from the populations of the court areas. Did the social class groups in the samples correspond with the different groups in the areas which the courts served? If this were the case, it might contribute towards an understanding of the associations in the pattern.

In order to examine this question, the occupational social class groups of the heads of the households from which the boys in the sample came were classified in the same groups:

TABLE VI

<i>Court Area</i>	<i>Social Class Groups</i>				
	1 %	2 %	3 & 4 %	5 %	Total %
Chelsea . . .	8.0	10.3	38.6	43.0	99.9
Friends' House . .	8.2	5.1	39.6	47.0	99.9
Lambeth . . .	3.0	13.0	35.0	49.0	100
S.E. London . . .	—	7.0	30.0	63.0	100
Stamford House . .	1.3	14.2	37.5	47.0	100
Toynbee Hall . . .	2.6	5.3	23.9	68.0	99.8
Average . . .	3.9	9.1	34.1	53.0	

This offers a remarkably interesting comparison with the Registrar-General's table for the general populations living in the court areas. The significance of the lowest status group (5) is at once apparent. The proportion of this group in the sample is nearly three times as great as that in the general population. The skilled and semi-skilled group (3 and 4) represented in the sample is about half of that in the general population. The proportion of supervisory group (2) is about three-quarters of the proportion in the general population whereas the professional group (1) is about equal in both.

Where there are similarities in the proportions of the higher status groups—Chelsea, Friends' House, Lambeth and Stamford House—out of the six courts serving these areas only two are associated in the pattern. The two remaining courts, S.E. London and Toynbee Hall, had low proportions in the higher status groups and particularly high proportions in the lowest status group (5). However, both these were unrelated in the pattern of associations.

It is therefore apparent that the sex of the chairman, the fact that two courts served one area, and the socio-industrial composition of the population of the court area throw no light on the similarities or otherwise in the court orders made.

THE ADEQUACY OF AVAILABLE INFORMATION

It will be recalled that we drew up an 'ideal' schedule of the necessary information concerned with the court history of the offender, the features of the offence, and his sociological, physical and psychological background. Each case file was searched for this information and either the factor itself

or whether there was no information was recorded for each entry in the 'model' case history record.

It is important to emphasize that we state that certain information was not available *from the files investigated*; this does not necessarily mean that such information was not in the possession of the magistrates. Aside from those cases where a plea of 'not guilty' was entered and in which all the evidence was recorded in writing, the remaining cases could always include orally stated facts and opinions which might not have been recorded. For instance, in each case the special officer of the local authority made an oral statement to the bench and this did not appear in the file. On occasions the notes of the Clerk of the Court would merely indicate that perhaps the mother or a schoolmaster or some other person 'made a statement'. There were a few very instances of probation officers who were acquainted with the offender because of a previous offence, and who chose to make an oral statement to the bench. In general, one had to rely on the Clerk's notes for any guidance about information brought to the court in other ways than by official reports. He might briefly record that the mother referred to the fact that 'the boy does not get on well with his father', etc. There were a few cases of the Clerk recording nothing in addition to the name of the offender, his age, type of offence and plea.

Although the special officer of the local authority made an oral report to the court, he in fact conveyed the information from the answers obtained to questions set out on a stereotyped enquiry form which guides officers in their investigations. We were able to take advantage of the services of the personnel in the Children's Department of the London County Council and, by referring to these enquiry forms, many gaps were closed in our coding sheets. This source of information was the most informative from the point of view of a sociological analysis.

None of the files were able to throw any light on impressions made on the courts by the appearance or demeanour of the delinquent and his relations. Further, there were, no doubt, instances where some statements and facts had not been recorded on any of the documents in some of the files. However, there was nothing to suggest that certain data might be consistently withheld from the files because of oral delivery. Subject to these reservations, it was most likely that the files contained the essential data on which the courts based their decisions. We classified the data in the following compartments:

- (1) Home conditions.
- (2) Family structure.
- (3) Family relationships.

- (4) Economic structure.
- (5) Factors of race and religion.
- (6) Health and physique of offender.
- (7) Mental and psychological conditions of offender.
- (8) Occupational data of offender.
- (9) Social activities of the offender.

At this stage some attention should be given to the extent of incompleteness of information in general and in each of the three major compartments of investigation. The total information sought from the 400 cases was deficient by 13.9 per cent. The first thirty-five questions in the analysis (a little under a half of the total enquiry) were concerned with administrative and legal data of previous court history and factual evidence of the offence. This information was deficient by only 1.8 per cent. It was obvious that no useful purpose could be served by an analysis of this section since no variation of significance was observed. The remaining information shows a deficiency of 24.5 per cent. with sociological information deficient by 21.6 per cent. and psychological questions unanswered in 60 per cent.

It is possible to consider 'information' as a block and to examine the deficiencies by an index of 'no information' for each court. This index relates to the number of unanswered questions in the 'model' case history.

TABLE VII

A Comparison of the Lack of Information for Different Courts

<i>Reference No.</i>	<i>Number of unanswered questions</i>
1}	10.1
8}	11.5
2}	15.2
5}	8.7
6}	13.3
7}	11.7
3	15.9
4	11.5
Average 12.3	

There seems no explanation of the classification of courts by the nature of their disposals to be found from this analysis.

We may now consider a similar index for the different kinds of information as follows:

<i>Social factors</i>	.	.	.	Home circumstances.
				Number in household.
				Number of relatives in household.
				Crowding.
				Lad's living conditions.
<i>Family factors</i>	.	.	.	Living with . . .
				Number of siblings.
				Legitimacy.
				Ordinal position in family.
<i>Family relationship factors</i>	.			Separations.
				War service of father.
				Regular work of father.
				Disturbance.
				Family crime.
				Parents' presence in court.
<i>Economic factors</i>	.	.	.	Economic status.
				Mother working.
				Wage earners (other).
<i>Race and religion factors</i>	.		.	Nationality.
				Religious background.
				Denominational school.
<i>Health and physique</i>	.	.	.	Health and physique assessment.
				Physical factors likely to affect psychological state.
<i>Psychological factors</i>	.	.	.	I.Q.
				Psychiatric assessment.
				Mental defects.
				Psychological assessment.
<i>Occupational factors</i>	.	.	.	Last occupation.
				Longest job.
				Duration of jobs.
				Part-time work.
<i>Social activities.</i>	.	.	.	Types of activities.
				Pocket money.

We may take these and examine the 'profile' for each court. In the table below the courts are all given a rank order according to the amount of information available in the court records under each of these main headings:

TABLE VIII
Ranks of Courts for Information under Headings

<i>Court No.</i>	<i>Social Factors</i>	<i>Family Factors</i>	<i>Family Relationship Factors</i>	<i>Economic Factors</i>	<i>Race and Religion</i>	<i>Health and Physique</i>	<i>Mental and Psychological</i>	<i>Occupation</i>	<i>Social Activities</i>
1	3	2	5	4	6	3	1	2	2
2	6	8	7	8	8	5	7	6	6
3	7	7	8	7	7	6	8	8	4
4	1	4	6	3	1	2	5	3	1
5	2	1	1	1	2	1	2	1	7
6	4	3	4	2	3	7	6	7	8
7	5	6	2	6	5	8	7	5	3
8	8	5	3	5	4	4	4	4	5

The numbers inside the block refer to the order ranging from maximum information (1) to minimum information (8).

It will be apparent from a study of this table that the differences between paired courts in rank order show little relationship with the identity or otherwise in respect of their sentencing policies. An interesting feature is the consistency with which certain courts appear in the extremes of the distribution.

Court 5 (with the exception of social activities) has been identified with the maximum of information. Courts 2 and 3 appear to function with the minimum of information and are also outstanding in their methods of disposal in that Court 2 makes the greatest use of probation, just as Court 3 makes the most use of conditional discharge. Both use these two types of adjudications respectively and in excess of the remaining. Court 5 (identified with the maximum of available information) makes more use of absolute discharge than any other court. The distribution of the different kinds of larceny was similar in all courts and the variations in court orders cannot be explained by any differences of this kind.

One would expect that the minimum of information might tend to be identified with the courts tending to dispose of the cases on a first hearing, and, conversely, that most information would become available to the court remanding for subsequent hearings and reports. However, this is not the case, and in fact Court 1, which had the maximum number of subsequent hearings and a high proportion of those remanded to a remand home (which of course is generally for the purpose of reports) was distributed erratically between almost the plus and minus extremes of 'no information'. No. 5 had three times as many 'first hearings' as No. 1, but No. 5 differed from all others in that 25 per cent. of these cases were 'adjourned', and there

were only two other cases of adjournment in all of the remaining 350 cases. No. 2 showed no deviation from the mean of 'first hearings', whilst No. 3 was in excess of the mean of first hearings, but not to an outstanding degree.

There was some relationship between the numbers of reports by probation officers and the available information placed before the different courts. The percentages of probation reports to each court's block of cases were as follows:

<i>Reference No.</i>	<i>% Probation Reports</i>	<i>No. 'no information' unit</i>
1	86	10.1
7	76	11.7
4	72	11.3
5	72	8.7
8	70	11.5
3	62	15.9
2	60	15.2
6	50	13.3

It will be seen from this table that no relationship exists between the groupings of the courts based on their treatment policies and the proportions of cases in which a report of an investigation by a probation officer was in the file.

If the courts are arranged according to the units of information contained in the probation reports, they take the following order:

	<i>Reference No.</i>
Maximum units of information	5
	4
	1
	6
	7
	8
	3
Minimum units of information	2

Here, apart from the relationship between Courts 6 and 7, it does not appear that there is any correspondence between the information contained in probation reports and the pattern of case disposals.

(To be concluded in the next issue.)

FAULTY PATERNAL AND MATERNAL-CHILD RELATIONSHIPS, AFFECTION AND DELINQUENCY

BY R. G. ANDRY (LONDON)

Many research workers have come to regard the concept of 'maternal deprivation' as being of primary ætiological importance in the fields of delinquency and psychopathology. This seems to have been especially so since the publication of Bowlby's (1) well-known book. The concept, despite its usefulness in special cases, is criticised here partly on the ground that it clouds the issue from the point of view of a theory of interacting multi-causation, and partly because it has its special limitations in that it omits to take adequate cognisance of the important complementary rôle which is played by fathers. It seems surprising that, especially in the field of juvenile delinquency where the majority of offenders are males and not females, the subject of mother/child relationship has dwarfed that of father/child relationship. The writer has consequently set out to re-examine quantitatively the rôles of fathers as well as mothers in relation to the field of delinquency, and to examine among other variables the usefulness of concepts such as 'maternal deprivation' and 'paternal deprivation.'

METHOD

In an endeavour to examine the rôles of both parents in relation to juvenile delinquency, the writer designed a clinical 'interview-questionnaire' (2) which covered a number of areas of child-parent attitudes, *e.g.* 'affection,' 'training,' 'intercommunication,' 'separation' and others. The area to be discussed in this article concerns 'affection' only. The major aim of the general study was to determine the attitude of the child to each of his parents' attitudes within the areas under review. A further aim was to cross-check such responses by independently asking both the mother and the father regarding their own attitude towards the child in these areas. The interview questionnaire was applied to a sample of 80 delinquents and 80 non-delinquents, to 30 mothers and 30 fathers of the delinquents, and to 30 mothers and 30 fathers of the non-delinquents. The interviews of the delinquents were obtained from a sample of recidivists at a London remand home for boys and the interviews of non-delinquents were obtained among boys at two geographically adjacent secondary modern schools. The experiment was designed in such a way that the samples were matched for sex (only boys

were examined), age (ranging from 11 to 15 years of age), socio-economic status (using the scale devised by Hall and Jones (3)), and intelligence. Furthermore, no interviews were carried out among boys from obviously 'broken homes' (*i.e.* only those cases whose parents lived together were studied). The aim was to allow the writer to examine the more subtle home stresses not due to overtly 'broken homes'. (A condition referred to by the Gluecks (4) as 'under the roof' broken relationship and also dealt with by Burt (5) and Mannheim and Wilkins (6).

Delinquent cases were deliberately selected during specified dates of their court appearances (1954/55). Non-delinquents were also chosen during 1954/55 and in accordance with a pre-selected alphabetical code drawn up from school records. The parents of the delinquents were independently interviewed at the remand home, and the parents of the non-delinquents were independently interviewed in their own homes. A refusal rate of 2 per cent. was recorded among parents of delinquents and of 1 per cent. of parents of the non-delinquents. It was possible to gain a maximum amount of co-operation from the parents and boys of samples because of the carefully planned liaison between the writer and the staff of the institutions concerned. The interview-questionnaire was developed from a statement of the central hypothesis of the experiment and was designed to examine whether statistically significant differences would emerge between the two samples in relation to child-parent attitudes in the areas under review. The special aim was to observe whether more delinquents than non-delinquents indicated by their answers that friction existed between themselves and their mothers and/or between themselves and their fathers. (In their answers they were given the choice of implicating not only their mothers or fathers but also both parents or neither.) The questions were read out to the subjects by the writer in a specified order and the answers were recorded by him in an 'answer column'. The instrument was especially designed to elicit specific answers in relation to areas of child-parent conflict, and was refined further by arranging the order of questions in a way which is similar to the order of questions which often occur in diagnostic interviews with recalcitrant delinquents. An interview-questionnaire booklet was filled in for each juvenile subject. The answers given by each of the parents were scored alongside those of the children in columns specially provided. Different coloured pencils for the three subjects were used. This method made it possible to see at a glance whether the boy's answers (with regard to child-parent attitudes) differed from those of the mother and/or from those of the father. The answers of all subjects were afterwards punched on cards, then subjected to Hollerith machine tabulation and were then examined for statistically significant differences in terms of χ^2 .

SOME OF THE FINDINGS IN RELATION TO THE AREA OF AFFECTION BETWEEN THE CHILD AND BOTH PARENTS

Owing to limitation of space it is not possible here to list all the hypotheses which were set up and examined or to report on all the relevant findings of this research project. The examination of hypotheses outlined in the next section has been reported on here because of the writer's assertion that the rôle played by fathers has been underestimated owing to the over-emphasis on the rôle played by mothers in relation to the delinquent child.

✓ (a) *Are mothers or fathers less affectionate?* In an endeavour to throw light on the problem of affection and to test several hypotheses the writer decided to ask the child the simple question: 'Which parent do you think loves you most, or is really closest to you?' In connection with this question the following two hypotheses were set up:

1. There are significantly more boys in the delinquent group than in the non-delinquent group who state that they feel more loved by their mothers than by their fathers.
2. There are significantly more boys in the non-delinquent group than in the delinquent group who state that they feel loved by both parents. Results confirmed both of these hypotheses. The differences which emerged were significant at the 5 per cent. level of confidence. It was found that there were in fact as many as 69 per cent. of delinquent boys who indicated that they felt more loved by their mothers than by their fathers. On the other hand, 56 per cent. of the non-delinquents indicated that they felt either loved by both parents equally, or by both parents, but mainly by their mothers. The following table shows the distribution of answers more clearly.

TABLE I
Showing whether Mothers or Fathers are Considered More Affectionate

	<i>Delinquents</i>		<i>Non-delinquents</i>		<i>Difference</i>
	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	
Mother	55	69	11	14	55%
Father	7	9	6	7	2%
Both	12	15	45	56	41%
Both, but mainly mother } Others (e.g. don't know, neither, both but mainly father)					
	6	7	18	23	16%
	80	100%	80	100%	

$\chi^2 > 7.82$ significant at 5 per cent. level.

A further question: 'Who should love you more in future?' was inserted in the questionnaire in an endeavour to check the previous question. The results were consistent with those of the previous question and they are summarized in the following Table II.

TABLE II
Showing which Parent Ought to be More Affectionate

	<i>Delinquent</i>		<i>Non-delinquent</i>		<i>Difference</i>
	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	
Father . .	73	54	6	7	47%
Both . .	19	24	3	4	20%
Neither (or mother) .	18	22	71	89	67%
	80	100%	80	100%	

$\chi^2 > 5.99$ significant at 5 per cent. level.

Here the writer had reasoned that if a larger number of delinquents than non-delinquents indicated that they felt more loved by their *mothers* (as shown to be the case in Table I), then the delinquents would indicate that they should in future be loved more by their fathers.

It is clear that positive statistical relationships exist between the results recorded in Tables I and II. The χ^2 s which have been calculated indicate that these differences between delinquents and non-delinquents could not have arisen by chance; and therefore it would seem that it is primarily faulty paternal and not maternal relationships which occur most frequently in the delinquent cases.

So far only statistical evidence has been quoted. It is of interest to note by way of clinical observation that qualitative differences between the two groups also emerged. It was found that more delinquents than non-delinquents were inclined to 'block' on the questions pertaining to parental affection. It should be pointed out that when subjects answered that they felt loved by both parents equally the question was always repeated a second time. At this stage two kinds of additional answers could be clearly distinguished. The non-delinquents were more inclined to state that they were 'of course' loved about equally by both parents rather than by one or the other (though they thought that mothers were of special importance to children). The delinquents, on the other hand, appeared to show hostility in answer to the question, and in many cases broke down and suddenly implicated one or other parent negatively. Such spontaneous outbursts were often accompanied by much noticeable display of affect.

(b) The next hypotheses which were tested were set up in order: (i) to confirm or negate the previous two, and (ii) to measure the degree of affection shown by each parent.

The three questions asked in this connection were: 1. Which parent do you think loves you perhaps just a *little more* than may be good for you? 2. Which one of your parents is probably the one that gives the *exact amount* of affection to you? 3. Which parent do you think loves you perhaps not quite enough? The author chose these questions rather than the Fels Scales (Champney) (7) to assess the degree of parental affection, since these scales seemed not quite relevant to this particular problem. The hypothesis designed to include these questions was formulated in the following way: 'It is hypothesized that the degree of affection shown by both mothers and fathers of delinquents will be significantly different (either more or less) from that shown by both mothers and fathers of non-delinquents, and that this difference can be measured.' The results are shown in Tables III, IV and V.

TABLE III

Showing whether Either or Neither Parent is Thought to Give Too Little Affection

	Delinquent		Non-delinquent		Difference
	Number	Percentage	Number	Percentage	
Either parent .	36	45	3	4	41%
Neither parent .	44	55	77	96	41%
	80	100%	80	100%	

$\chi^2 > 3.85$ significant at 5 per cent. level.

TABLE IV

Showing whether Either or Neither Parent is Thought to Give Too Much Affection

	Delinquent		Non-delinquent		Difference
	Number	Percentage	Number	Percentage	
Neither parent .	75	94	80	100	6%
Other answers .	5	6	0	0	6%
	80	100%	80	100%	

χ^2 was not calculated because inspection shows that no differences exist between the two groups.

TABLE V

Whether Parents are Thought to Give the Correct Amount of Affection

	<i>Delinquent</i>		<i>Non-delinquent</i>		<i>Difference</i>
	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	
Father or both parents	30	62	74	93	31%
Mother or neither parent	50	38	6	7	31%
	80	100%	80	100%	

 $\chi^2 > 3.84$ significant at 5 per cent. level.

An analysis of the results of Tables III, IV and V shows that this hypothesis has been essentially confirmed. It was possible to discover whether it was thought that 'too little love' or the 'correct amount of love' had been given, but it was difficult to discover whether 'too much love' was thought to have been given. The writer believes that his subjects would tend to consider parental affection shown to excess less an inherent defect than a sign of faulty discipline (for instance many subjects remarked, when asked further about this point, that showing too much affection really meant 'spoiling a child'). The results are of further interest in the light of findings reported by Levy (8), who stresses the resulting ill-effects of what is usually called 'over-protection of the child by the mother'. Tables III, IV and V, however, tend to suggest that the factor of 'maternal over-protection' does not account for all of the findings in this research. For instance, as many as 45 per cent. of the delinquents recognized that both parents gave them too little affection compared with only 4 per cent. of the non-delinquents who stated this. It can also be seen that many more non-delinquents (93 per cent.) than delinquents (62 per cent.) thought that their fathers showed them 'the correct amount of affection'. It is therefore suggested that there is a great need to define rigorously a term such as 'over-protection', which is often found in the literature but not defined or objectively demonstrated. Related to delinquency here it would not seem to be of primary importance.

(c) *Unconscious identification and affection*: A notion often advanced by clinicians is that unconscious identification can be assessed by asking children (i) which parent they think they look like, and (ii) which parent they think they are like in their habits and ways. Accordingly these questions were included in the questionnaire by way of testing the hypotheses in the hope that they would shed light on character development generally and identification with a father or a mother figure specifically. The reasoning here is that, if a child says that he has his father's ways, he may therefore indicate that he has identified himself with his father. While such identi-

fications might conceivably be negative it was assumed that, where identifications were mentioned, they were usually positive.

The wording of the hypothesis was: 'It is hypothesized that there is a positive correlation in the answers given by the boys in both groups (delinquent and non-delinquent) between the following items: (a) 'Unconscious identification as measured by (i) the question: "Which parent do you look most like?" and (ii) "Which parent's ways do you mostly have?"' (b) Closeness of affection between a child and the parents, as measured previously by the question that ascertained which parent the child felt most loved by.' (See Table I.) The results are shown in Tables VI and VII.

An analysis of the results shows rather clearly that the hypothesis has only been confirmed partially. It may be seen that no correlation evidently exists between unconscious identification as measured by the question: 'Which parent do you look most like?' on the one hand, and the question: 'Which parent (really) loves you most?' on the other hand. The results in Table VI show that those delinquents who think that they are most loved by their mothers are equally divided in their responses as to which parent they think that they resemble, *e.g.* 27/55 of them say that they resemble their fathers or both parents in looks and 28/55 say that they resemble their mothers in looks. Likewise, the non-delinquents, 87 per cent. of whom say that they are most loved by their fathers or by both parents, are divided in their answers as to which parent they resemble. 34/69 say that they resemble their mother in looks while 36/69 say that they resemble their father or both parents.

TABLE VI

Showing Inter-Relationship between Perception of Affection of a Parent and Resemblance of a Child in Looks to the Affectionate Parent

	Delinquent		Non-delinquent		Difference
	Number	Percentage	Number	Percentage	
Mother thought more affectionate and mother more resembled . . .	28	35	5	5	30%
Mother thought more affectionate and father or both parents resembled most . . .	27	34	6	8	26%
Mother more resembled and father or both parents affectionate . . .	9	11	34	43	32%
Father and both parents affectionate and father and both parents resembled . . .	16	20	35	44	24%
	80	100%	80	100%	

$\chi^2 < 7.82$ not significant at 5 per cent. level.

TABLE VII
*Showing Inter-Relationship between Parents' Affection and Considered
Resemblance regarding their Characteristics*

	Delinquents		Non-delinquents		Difference
	Number	Percentage	Number	Percentage	
Mother thought more affectionate and mother similar characteristics .	36	45	4	5	40%
Mother thought more affectionate and sharing of father's and both parents' characteristics	19	24	7	9	15%
Mother's character shared compared with affection by father and both parents	9	11	14	17	6%
Father and both parents considered affectionate and both parents shared characteristics	16	20	55	69	49%
	80	100%	80	100%	

$\chi^2 > 7.82$ significant at 5 per cent. level.

The hypothesis has, however, been confirmed in relation to the question: 'Which parent's ways do you mostly have?' in that a definite correlation emerged between this question and the central question: 'Which parent (really) loves you most?' Of the non-delinquents who say that they are most loved by their mothers, 36/55 say that they resemble their mothers in their ways, and of the non-delinquents who say that they are most loved by their fathers or by both parents equally 55/69 say that they resemble their fathers or both parents in their ways.

It therefore follows that, whereas there does not seem to be a close relationship between parental affection and the perception of a child as to which parent he resembles, a positive relationship does exist between answers of children who feel more loved by a particular parent and who in turn express the feeling that they share essentially the ways and characteristics of that same parent (*i.e.* in the case of the non-delinquents primarily both parents, whereas in the case of the delinquents especially their mothers). It is consequently clear that this latter question throws useful light on parental identification and the total affective relationship between a child and his parents. This was further reinforced by clinical observations where several delinquents, who stressed that they felt rejected by their fathers, pointed out negative characteristics which they reluctantly admitted that they shared with their fathers. Here the concept of negative identification with fathers would seem to explain the findings, and would seem to be especially in keeping with opinions expressed by Friedlander (9) and Glover (10) rather than with those expressed by more extreme exponents of the theory of

'maternal deprivation' who appear to go beyond Bowlby's (1) own defined position.

(d) *Possible change of parental protection.* Most clinicians seem to agree that parental affection towards children, in order to be most effective, should be stable and continuous. It was consequently reasoned that the continuity of parental affection could best be tested by asking the child: 'Which parent sticks up most for you?' and 'Has this always been so?' and then to compare the answers with those given in response to the central question on affection, viz. 'Which parent do you think loves you most or is really closest to you?'

The writer reasoned that answers to such clear-cut questions might be helpful in throwing light on the question as to whether or not the child perceives over time a continuity of parental behaviour as regards affective relationships. Furthermore, if such a perceived continuity of parental behaviour can be demonstrated, the writer believed that the delinquent and non-delinquent subjects would not differ in respect of the degree of continuity said to be shown by their parents. Accordingly the following hypothesis was set up: 'It is hypothesized that whoever is claimed by the boy to be his principal parental protector at the present time is also claimed as having been his principal protector in the past, and further is claimed as the parent who loves him most: and that this is likely to occur in both the non-delinquent and the delinquent groups.'

Results appear to confirm the hypothesis. It was found that answers to the question: 'Which parent is more inclined to stick up for you?' correlated highly with the question: 'Which parent do you think loves you most?' Findings of these two questions show that 45 per cent. of the non-delinquent boys stressed that both parents stick up for them during crises and 79 per cent. of the delinquents said that their mothers only would stick up for them. (The differences are statistically significant.) This finding indicates again that the fathers of the delinquent sample are shown to be the less helpful parent during crises.

The results also confirm the hypothesis concerning continuity of parental behaviour in that no significant differences were found between the two samples in relation to the question as to whether a parent had *always* stuck up for the boy. It would therefore seem that parental attitudes of the present are perceived by the children of both samples as similar to those of the past.

(e) *'Affectionless characters' and the showing of affection.* The writer has felt the need for setting up and testing several specific hypotheses which are related to types of affect relationships in view of Bowlby's (11) reference to the term 'the affectionless character'. No clear guidance, however, exists as to how to define such a term. The writer felt that one objective way

of testing this notion (or part of it) might be by formulating the following three questions. 1. Is your mother the kind of person who gets rather embarrassed to show openly that she loves you? 2. Is your father the kind of person who gets rather embarrassed to show openly that he loves you? 3. Are you the kind of person who gets rather embarrassed to show openly that you love your parents? Attempts were here made to view the whole problem of the 'affectionless character' in its wider setting, namely that of determining whether or not parental affection could be shown overtly or not.

It is often posited that different kinds of affect-relationships between children and parents exist. For instance there are children (i) who have very little feeling for their parents; (ii) who have warm feelings for their parents but who are unable to show such feelings openly or 'overtly' or (iii) who have warm feelings *and* who are capable of 'overtly' showing much warmth and affection to their parents.

Two hypotheses were set up in order to find out: (a) whether the three types of children which have been described above can be identified; (b) whether delinquents and non-delinquents differ in their ability to show affection overtly; (c) whether parents of delinquents and parents of non-delinquents differ in their ability to show affection overtly; (d) whether mothers or fathers who were described (either by themselves or by their children) as having difficulty in expressing affection 'overtly' tend to have children who also have difficulty in expressing affection 'overtly'.

Two hypotheses were consequently formulated, as follows: (1) 'It is hypothesized that there are more *parents* in the non-delinquent group who show affection "overtly" to their boys than there are in the delinquent group'; and (2) 'It is hypothesized that there are more *boys* in the non-delinquent group who show their affection "overtly" to their parents than there are in the delinquent group.'

Results confirmed both hypotheses. Whereas 52 per cent. of the delinquents think that their mothers get embarrassed to show openly that they love the boy, only 12 per cent. of the non-delinquents think so; *i.e.* significantly more mothers of the *delinquents* than of the non-delinquents are thought to have difficulty in showing affection openly. Similarly it was found that only 23 per cent. of the non-delinquents thought that their father had difficulty in showing affection openly whereas significantly more boys (65 per cent.) in the delinquent sample stated that this was the case.

When comparing differences between the attitudes of mothers and fathers, it can be seen that more non-delinquents than delinquents implied that neither parent had difficulty in showing affection openly (88 per cent. of mothers and 77 per cent. of fathers of non-delinquents were not thought to get embarrassed). It can also be seen that delinquents more frequently

implied that their fathers rather than their mothers had difficulty in showing affection openly (52 per cent. of mothers and 65 per cent. of fathers of delinquents were thought to become embarrassed when showing affection openly).

Not only the first but also the second hypothesis is confirmed. More non-delinquents (86 per cent.) than delinquents (44 per cent.) say of themselves that they do not get embarrassed to show openly that they love their parents. This finding is essentially in keeping with Bowlby's (11) and implies that delinquents are perhaps more 'affectionless' than non-delinquents. Regarding the possible existence of an 'affectionless character', it must be noted, however, that as many as 44 per cent. of the delinquents seem to say of themselves that they do not think that they get embarrassed to show openly that they love their parents. This was confirmed by a little less than 44 per cent. of both parents of the delinquents. (Results suggest that lack of affection and delinquency are associated in specific cases and that other forms of the 'affectionless character'—such as a person who merely wears the mask of affection—have perhaps not been studied specifically here.)

It should be noted that, generally speaking, those children (irrespective of whether they were delinquents or non-delinquents) who implied that they had difficulty in showing affection to their parents openly also implied that their parents were the kind of people who had difficulty in showing affection openly. These boys also implied that their fathers rather than their mothers had difficulty in showing affection openly. Thus it seems clear that a positive relationship exists between the ability of parents and the ability of children to show affection *overtly* and also that a positive relationship exists between the inability to show affection and the evidence of delinquency.

(f) *Parental hostility perceived by the child.* In an endeavour to consider the negative aspect of affection several hypotheses were set up and tested which were concerned with parental hostility towards the child. The writer sought to discover whether parents of delinquents were more inclined to 'nag' and 'pick on' the boy than were parents of non-delinquents. Appropriate hypotheses were set up where it was reasoned that (1) delinquents felt more 'nagged' and 'picked on' than non-delinquents; (2) those children who in a previous question had said that they felt more loved by their mothers would demonstrate negative cross-parental feelings of affection by stating that they were 'nagged' and 'picked on' more by their fathers than by their mothers; (3) degrees of parental hostility could be shown to exist in that 'nagging' was thought to be a milder form of hostility than 'picking on' a child.

The results confirmed these hypotheses rather clearly. As expected, a high negative correlation emerged on the one hand between the question

regarding which parent loved the boy most and the question regarding which parent was thought to 'nag' or 'pick on' the child. Among the non-delinquents as many as 73 per cent. who had said that they felt loved by both parents equally also said that neither parent was inclined to 'nag' them. However, among the delinquents 50 per cent. of those who had said that they felt more loved by their mothers indicated that they felt more 'nagged' by their fathers, with an additional 27 per cent. who inferred that they felt 'nagged' by both parents.

Consistent with these findings, though less pronounced, are the results which emerged from the question on which parent 'picked on' the child more. Of the 62 delinquents who had said that they were preferred by either of their parents, 42 had said that neither parent 'picked on' them. However, 58 of the 63 non-delinquents who had said that they were loved by both parents equally said that neither parent 'picked on' them.

In summary, it seems that the majority of non-delinquents feel loved about equally by both parents, they do not feel that they are unduly 'nagged' by either parent and they feel even less 'picked on' by their parents. The majority of delinquents, however, not only feel less loved by their fathers, but also more 'nagged' by their fathers and to a lesser extent more 'picked on' by their fathers.

(g) *Agreement of answers between the child and the parents.* As far as the writer is aware, no previous study similar to this one exists where the same items have been asked not only of the child but later of *each* of his parents in the form of an 'interview-questionnaire'. It is considered that such a technique was necessary for the successful completion of the project for the following three reasons: (i) To get a comprehensive picture of the child's perception of the rôles of his mother and father; (ii) to compare such rôle perceptions of the child with the rôle perception of the mother and father in relation to major events in the child's life space, and (iii) to help devise an instrument which could assist in measuring interparental and child relationship in an objective and quantifiable way.

It was reasoned that at least twelve different possibilities could exist where a child might be found to agree with his father's but not his mother's opinions or with both or neither parents, where the parents' answers disagreed with each other, etc. Consequently two major hypotheses were developed which were concerned with the agreement between the child and his parents: (i) that more disagreement might exist between the answers of the delinquent and his parents than between answers of the non-delinquent and his parents (either because the delinquent or his parent(s) would be unwilling to tell the truth or they would be incompetent to assess events so objectively that agreement between the various family members would exist);

(ii) that more disagreement amongst *parents* of delinquents would be found than among *parents* of non-delinquents (because there would be greater stresses and strains between the parents of delinquents than between the parents of non-delinquents, which in turn might have contributed towards the child's delinquent behaviour).

The results are shown in the following table.

TABLE VIII
*Showing Inter-Relationship between Agreement of Answers Given by
Boys Compared with those Given by Parents*

	<i>Delinquent</i>		<i>Non-delinquent</i>		<i>Difference</i>
	<i>Number</i>	<i>Percentage</i>	<i>Number</i>	<i>Percentage</i>	
Mother, father and boy agree	22	73	26	87	-4%
Mother and/or father and/or boy disagree	8	27	4	13	4%
	30	100%	30	100%	

$\chi^2 < 3.84$ not significant.

An analysis of the results shows that the hypotheses are not confirmed though some positive trends have emerged. It seems clear that there is a large measure of agreement between delinquents (73 per cent.) and non-delinquents (87 per cent.) and their parents and that there is a large measure of agreement between mothers and fathers in both groups. Thus it would seem that delinquents and non-delinquents alike seem to be capable of giving answers to personal questions which do not differ substantially from those answers given by both their parents, *i.e.* parents of either group tend to confirm whatever answers were given by their children. Slight trends were of course noted which seemed to suggest that greater discrepancies exist between the answers of delinquents and their parents than between the answers of the non-delinquents and their parents. It is important, however, to realize that no statistically significant differences emerged. One must conclude, therefore, that at least as far as rôle perception is concerned no differences exist between delinquents and non-delinquents. The delinquent who feels rejected often by his father not only realizes this fact, but moreover his parents openly admit this. Similarly the non-delinquent who feels secure in the love of both parents assesses his affective relationship with his parents in an identical way as his parents assess the relationship.

The question arising from all these findings is whether one can any longer

accept as valid the theory that the concept of 'maternal deprivation' is of primary ætiological importance in relation to delinquency. The main finding here is that paternal affective relationships in the delinquent cases are demonstrably less adequate than maternal affective relationships.

Some form of 'parental rejection' over a period of years rather than separation from a mother at an early age would appear to be one of the main mechanisms at work in the majority of cases in the development of delinquent behaviour. (In support of this, the writer found no statistically significant differences between the two samples in relation to early separation (2).) In the case of many delinquents reported on here there is specific evidence of paternal rejection, or duo-parental rejection. This does not necessarily affect the belief that in some specific cases the ætiological factor of 'maternal deprivation' might be involved.

SUMMARY

An investigation was carried out in which a specially designed interview-questionnaire was used and in which a comparison was made between the answers of delinquents and non-delinquents and their parents. A total sample of 80 delinquents and 80 non-delinquents with a sub-sample of 30 parents of delinquents and 30 parents of non-delinquents was interviewed. Results were tested for significant differences by the χ^2 method.

(1) An examination of the sample showed that 75 per cent. of the delinquents as well as non-delinquents appear to have been separated from their parents at some stage or other for different lengths of time (2) during infancy. There was a higher degree of measurable paternal rejection among the delinquent group than of 'maternal deprivation.'

Non-delinquents described the relationship between them and both their parents as satisfactory. With delinquents it was found in contrast to most other previous writings that the relationship between them and their mothers seems by comparison decidedly more satisfactory than the relationship between them and their fathers.

(2) As many as 44 per cent. of the delinquents could not be described as 'affectionless characters' in so far as they said that they were capable of expressing their affection to their parents overtly and in so far as this was confirmed by their parents. (Special and obviously 'affectionless characters' were, however, identified.)

(3) The majority of both parents in the delinquent group do not tend to show affection towards their boys overtly. This inability was found more frequently in the case of fathers.

(4) Parents who do not normally show affection overtly tend to have children who do not usually show affection overtly.

(5) Many delinquents do not identify with their fathers (*i.e.* do not say they have their fathers' ways), presumably because they feel rejected by their fathers.

(6) Parental attitudes of the present are not perceived by children as being basically different from those of the past; *i.e.* if parental or paternal rejection is felt by a delinquent he is likely to have felt this in the past.

(7) Degrees of parental hostility exist especially with fathers of delinquents who tend to 'nag' their children and to a lesser extent tend to 'pick on' them.

(8) The 'agreement code' which was devised to measure the amount of disagreement between the answers of the child, the mother, and the father registered that relatively little disagreement exists between answers of the delinquents and their parents and non-delinquents and their parents in relation to affective relationships. The results based on this 'agreement code' tended to confirm the finding that most delinquents feel rejected by both parents but especially by their fathers.

The concepts of 'faulty *paternal* and maternal-child relationships (or of 'dual parental rejection', with special emphasis on 'paternal rejection') rather than 'maternal deprivation', are therefore advanced as useful alternative ætiological descriptions especially in the field of delinquency.

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THE HOMICIDE ACT, 1957: A CRITIQUE

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INTRODUCTION

The Homicide Act, 1957, marks the culmination of a long political struggle which began nearly ten years ago with the decision of the House of Commons to suspend capital punishment for a trial period. Strong opposition manifested by the Upper House to such a move resulted in the clause in the Criminal Justice Bill of 1948, which gave effect to this experiment, being deleted. The appointment the following year of the Royal Commission on Capital Punishment, albeit with terms of reference which precluded consideration of whether abolition of the death penalty was desirable, resulted in the Parliamentary protagonists going into self-imposed hibernation so far as this burning issue was concerned. In 1953 the exhaustive and illuminating Report of the Royal Commission was published, and the struggle was renewed in 1956 with the passage through the House of Commons, despite the advice of the Government, of Mr. Sydney Silverman's Death Penalty (Abolition) Bill. Once again, however, the jubilation of the abolitionists was short lived, the attainment of their objective being thwarted by the overwhelming majority of peers who stopped the progress of the Bill at its second reading in the House of Lords. Following the decisive intervention in that debate of, in particular, Viscount Samuel and the Archbishop of Canterbury,¹ coupled with the well-timed publication by the Inns of Court Conservative and Unionist Society of a pamphlet² urging certain reforms in the substantive law relating to murder, the Government took the initiative and introduced the Homicide Bill. The first cursory reading of the Bill sufficed to realize that its aim was to provide the greatest measure of common ground between, on the one hand, the considerable body of retentionists who, it was believed, favoured restricting both the scope of liability for murder and the consequent application of the death penalty and, on the other hand, those non-die-hard abolitionists who were prepared to achieve a limited advance in the form of abolishing capital punishment for certain classes of murder. Compromise, such as instigated the present measure, is nothing novel in Parliamentary affairs but it is none the less remarkable that, during the passage of the Bill through the House of Commons and the House of Lords, not a single

¹ See the statement by the Lord Chancellor, *The Times*, 8th March, 1957.

² The considerable influence exerted by this pamphlet was in no small measure due to the chairman of the Committee, which prepared the pamphlet, being the former Conservative Attorney-General, Sir Lionel Heald, Q.C.

amendment was made to any of its provisions as originally published. That is not to suggest that the objects of the measure were not subjected to studied criticism, both on the wider issues of policy involved and of the more legalistic problems apparent only to those trained in the law. It is, then, with the application of the law as now modelled by the Homicide Act, 1957, that this article is primarily concerned.

CRIMINAL INTENT IN MURDER

In the van of provisions amending the substantive law of murder is the abolition, by s. 1 of the Act, of the much criticized doctrine of constructive malice. To appreciate the significance of this reform a word or two of explanation is necessary as to the application in cases of murder of the fundamental principle in criminal law, *viz.*, that no person is liable to be punished for an act which he has done unless he has a guilty mind—what lawyers describe as the *mens rea* of a crime. Leaving aside for the moment a recent decision of the Court of Criminal Appeal, *R. v. Ward*, [1956] 1 Q. B. 351, which, in the opinion of the present writer, undoes much of the good effected by s. 1 of the Homicide Act, 1957, murder is only committed if it can be shown that the death of the victim was caused by an act of the accused done with the intention of killing or of causing grievous bodily harm or with reckless disregard as to the consequence of killing or causing grievous bodily harm. Implicit in this statement of the law is the requirement that the accused in doing the act realized or foresaw the consequence that his victim would die or suffer serious bodily injury and desired that one or other of those consequences should ensue—a state of mind described as ‘intention’; or, though not desiring either of those consequences the accused was indifferent as to whether they were occasioned or not—a state of mind described as ‘recklessness’. In both instances, intention and recklessness, a subjective test of criminal liability is the governing criterion—what the jury is required to assess is the criminal intent of the individual person accused of murder.

Under the old doctrine of constructive malice, however, where death resulted from an act of violence done by the accused in the course of committing a felony of violence or in resisting arrest by an officer of justice, liability for murder was established notwithstanding the fact that the death was accidental and that the accused neither intended to kill or to do serious bodily injury nor foresaw that he was likely to do so. In cases of constructive murder the law was not concerned with whether the accused realized that certain results would follow from his act; the law was prepared, on grounds of public policy, to impute irrefutably to the accused the requisite *mens rea*, on the basis that any person who uses violence when committing a felony of

violence or in resisting arrest acts at his peril. Although the practical operation of this doctrine had been mitigated by the courts its abolition was recommended by the Royal Commission on Capital Punishment. This has now been accomplished and henceforth, though scarcely discernible from the wording of s. 1 itself, the same criminal intent will be required in the above special categories as in all other cases of murder, no distinction being drawn between capital and non-capital murders.

All that s. 1 says is that there must be express or implied 'malice aforethought', a phrase which embodies all the various states of mind discussed above when defining the *mens rea* in murder. The ordinary layman may be forgiven, however, for inquiring wherein lies the difference, if any, between 'implied malice' which is retained, and the concept of 'constructive malice' which is abolished. Implied malice is simply the expression used in cases of murder to denote the application of the time-honoured maxim that a person is presumed to intend the natural consequences of his conduct. In the absence of any direct evidence as to the offender's state of mind, *e.g.* an admission by the accused himself, it is permissible, indeed it is the general rule, to look at the conduct of the accused, to consider what a reasonable person in similar circumstances would have foreseen as likely to be the natural consequence of such conduct, and then to attribute such foresight and presumed intention to the accused. The important feature of this widely used presumption, a fact which cannot be over-stressed, is that it is rebuttable, it being open to the accused to call contrary evidence, *e.g.* as to mistake or drunkenness, which may defeat the inference which would otherwise be drawn. No such denial was permitted to the accused in those cases wherein the doctrine of constructive malice could be invoked by the prosecution. Based on an objective theory of liability, in the field of constructive malice the presumption as to intent was regarded as irrebuttable. Although such a severe principle has now been abolished by the Homicide Act so far as cases of killing in the course of resisting arrest or of committing felonies of violence are concerned, the recent decision in *R. v. Ward* (1956) goes a long way towards perpetuating and, it must be said, extending the same iniquitous theory throughout the entire field of murder. For, in that case, Lord Goddard, C.J., delivering the judgment of the Court of Criminal Appeal, approved of the trial judge's direction to the jury that '... If when the prisoner did the act he must as a reasonable man have contemplated that death or grievous bodily harm was likely to result he is guilty of murder.'³ Thus stated it will be clearly seen that reference to the accused's state of mind is irrelevant, an objective criterion of liability being preferred. Provided a reasonable person would have contemplated such consequences then the

³ [1956] 1 Q. B. at pp. 355-6.

presumption that the accused intended to kill or to do grievous bodily harm is irrebuttable. Such, in fact, was the underlying theory of constructive malice—now it is seen reappearing in the prevailing doctrine of implied malice. It is unfortunate that the implications of the Court of Criminal Appeal's decision—directly counter, as it is, to the reform instituted in s. 1 of the Act—should not have been adverted to during the passage of the enactment through Parliament. In the words of the Royal Commission on Capital Punishment ' . . . any departure from a subjective test of criminal liability can be justified, if at all, only if it is clearly established that it is essential for the protection of the public.'⁴ Parliament has shown that the retention of the doctrine of constructive malice is no longer necessary on that score—what possible justification, therefore, can there be for the introduction by means of judicial legislation of an objective test of criminal liability in cases of murder?

PROVOCATION AND THE REASONABLE MAN

It is, of course, true that in amending the existing law as to provocation so as to include words in addition to conduct as recognized forms of provocation—incidentally another of the Royal Commission's recommendations⁵ to be embodied in the Homicide Act—the statute expressly lays down in s. 3 that the jury must decide the issue of provocation according to the effect which, in their opinion, it would have on a reasonable man. In this respect, the defence of provocation is akin to that of self-defence, both being judged by objective standards. Furthermore, it is significant that in both these defences the question of intent is not involved. The present writer has endeavoured elsewhere⁶ to show the fallacy of the opinion, expressed in the House of Lords case of *Holmes v. D.P.P.*, [1946] A. C. 588, that provocation negatives an intention to kill or to inflict grievous bodily harm, preferring the view enunciated by Lord Goddard, C.J., when delivering the opinion of the Judicial Committee of the Privy Council in *Att. Gen. of Ceylon v. Kumarasinghege Don John Perera*, [1953] 2 W. L. R. 238. In that case the Lord Chief Justice declared that 'the defence of provocation may arise where a person does intend to kill or to inflict grievous bodily harm but his intention to do so arises from sudden passion involving loss of self-control by reason of provocation'.

Once the true nature of the defence of provocation is understood to be divorced from the separate question of *mens rea* for the crime of murder and to be simply a humane recognition of the fact that, where the victim's

⁴ *Report*, Cmd. 8932, para. 97.

⁵ *Ibid.*, para. 151.

⁶ (1953), 69, *Law Quarterly Review*, 547.

own provocation leads to the accused losing control of his emotions, a reduction in the heinousness of the crime and the ensuing penalty is called for, there appears to be nothing illogical in maintaining an objective test for provocation whilst at the same time stressing the subjective character of the guilty intention. Whereas the question of *mens rea* is fundamental to the issue of criminal liability, provocation is related rather to the penalty to be imposed. Although during the debate in the Commons on this question of provocation many reasons were advanced for adhering to the 'reasonable man' test, the paramount reason remained unexpressed. It is the realization of the enormity of the crime of murder or, rather, the gravity of the penalty exacted by law. As Viscount Simon stated the position in *Holmes v. D.P.P.*, [1946] A. C. 588, 601, '... the reason why the problem of drawing the line between murder and manslaughter, where there has been provocation, is so difficult and so important, is because the sentence for murder is fixed and automatic. In the case of lesser crimes, provocation does not alter the nature of the offence at all: but it is allowed for in the sentence. In the case of felonious homicide, the law has to reconcile respect for the sanctity of human life with recognition of the effect of provocation on human frailty.'

The substitution, by the Homicide Act, in cases of non-capital murder of a sentence of life imprisonment in place of the death penalty, which is henceforth to be reserved only for capital murder, has not, so far as the present reasoning is concerned, altered the position greatly. The penalty of death is no longer universal in all cases of murder, but whether it be capital or non-capital murder the sentence ordained by law is fixed and outside the discretion of the trial judge. Should the defence of provocation prevail and the accused be convicted instead of manslaughter the judge may, it is true, impose the maximum sentence of life imprisonment, so that the penalty incurred would be the same as if the accused had been found guilty of non-capital murder. The difference, however, between the two crimes is that in manslaughter cases the judge is not bound to impose the maximum sentence and, indeed, this is a rare occurrence; complete discretion is vested in the trial judge as to the length of sentence which he considers appropriate to impose. If, eventually, the complete abolition of capital punishment is achieved and life imprisonment is substituted in its place with the actual period of detention to be served by the prisoner determined by the Executive, the case for the retention of the 'reasonable man' test will surely be considerably weakened. At the present time, it is suggested, underlying its retention in the Homicide Act is the familiar doctrine of public policy which considers it essential to fix the standard of exemption from the supreme penalty by the higher criterion of the reasonable man rather than by reference to the frailties of the accused. What public policy dictates to be expedient in cases of capital

murder is, without argument, deemed equally essential in cases of non-capital murder.

Leaving aside consideration of the 'reasonable man' test as a question of policy, additional doubts as to the desirability of such a standard are engendered by reference to the interpretation placed by the judges upon such a criterion in several recent cases. The extension of the defence to include provocation by words will eradicate at one blow the blots on the law created by the House of Lords in *D.P.P. v. Holmes* who had ruled, first, that words could only constitute sufficient provocation 'in circumstances of a most extreme and exceptional character', and, secondly, that under no circumstances would a confession of adultery be regarded as sufficient provocation. The decision in *Holmes* was symptomatic of a movement evidenced by several recent cases in which the position, established in the nineteenth century, wherein the right of the jury to determine the issue of provocation as a question of fact was gradually being supplanted by the judges deciding the question of provocation as a matter of law. To cite but a few examples, it has been held that a reasonable man is not normally drunk (*R. v. McCarthy*, [1954] 2 Q. B. 105), nor excitable (*Mancini v. D. P. P.*, [1942] A. C. 1) nor sexually impotent (*Bedder v. D. P. P.*, [1954] 1 W. L. R. 1119), that he does not lose his self-control on hearing a confession of adultery (*Holmes v. D. P. P.*, [1946] A. C. 588), but he becomes unbalanced at the sight of adultery provided he is married to the adulteress (*Maddy* (1671), 1 Vent. 158) and, finally, even if he loses control he is expected to resort to no more than reasonable measures of retaliation (*Holmes, op. cit.*).

The important consequence of this judicial diagnosis of the reasonable man's attributes and probable behaviour is that unless the accused person measures up to these ordained standards then, if the killing is treated as capital murder, no alleviation from the death penalty is provided by law to the accused. The Homicide Act now declares (s. 3) that: 'Where on a charge of murder there is evidence on which the jury can find that the person charged was provoked . . . to lose his self-control, the question whether the provocation was enough to make a reasonable man do as he did *shall be left to be determined by the jury*⁷ . . .' Does this provision represent the intention of the Legislature to effect a complete reversal of the present tendency whereby the judges, by fixing recognized legal categories of provocation and also the permissible modes of retaliation, have used the 'reasonable man' test as a means of withdrawing the issue of provocation altogether from the jury? Such a practice, it is respectfully suggested, is the direct negation of the purpose stated in s. 3 of the Act, which, it is to be hoped, will succeed in restoring the defence of provocation to its proper place as a question of fact

⁷ The writer's italics.

to be determined by the jury in the light of all the available circumstances.

During the Commons debate on the proper criterion by which to judge provocation, considerable emphasis was placed by the Attorney-General⁸ on the injustice which the adoption of a purely subjective test would occasion as between, on the one hand, a good-tempered person and, on the other hand, a normally excitable or pugnacious individual. By analogy, drunkenness which causes a normally sober person to become temporarily excitable or pugnacious has been treated by the courts as extraneous to the issue of provocation (*R. v. McCarthy*, [1954] 2 Q. B. 105). And yet, in other circumstances, English law is prepared to recognize self-induced intoxication as a complete defence to a criminal charge (*D. P. P. v. Beard*, [1920] A. C. 479), and, likewise, with the case of a person who acts under a genuine mistake which is regarded as completely unreasonable (*Wilson v. Inyang*, [1951] 2 K. B. 799). On such occasions the criminal law is concerned only with the question whether the accused had the requisite guilty mind for the offence charged, the reasonableness or otherwise of the accused's belief being directed solely to the question of credibility to be attached to the accused's plea.

That, to the mind of the present writer, is as it should be. If no injustice, by way of preferential treatment, is attributed to the application of a subjective criterion in these circumstances, it is difficult to see the justification for the contrary attitude adopted in relation to provocation. The hardship occasioned by the 'reasonable man' test is, perhaps, best seen in the hypothetical case of a man suffering from a physical infirmity such as the absence of a limb or blindness or some facial disfigurement. The suggestion that in such a case the reasonable man should be invested with the peculiar physical qualities of the accused, and the question asked what would be the reaction of the limbless or blind reasonable man in the circumstances, was rejected by the House of Lords in *Bedder v. D. P. P.*, [1954] 1 W. L. R. 1119, and again by Parliament. It is the unreality of such a test which makes it so unsatisfactory a general standard for provocation. There remains the straight choice between an objective and subjective criterion. For the reasons already stated, together with the belief that juries in applying the 'reasonable man' test find it well-nigh impossible to isolate from their minds the particular emotional or physical infirmities of the accused, the present writer regrets the retention in the Homicide Act of the objective standard.

SUICIDE PACTS

Prior to the enactment of the Homicide Act, if two persons entered into an agreement to commit suicide and one of them died in pursuance of the

⁸ See 561 H.C. Deb. Col. 504; 28th November, 1956.

agreement but the other survived, the survivor was liable to be charged with and convicted of murder. Evidence put before the Royal Commission on Capital Punishment by the Home Office⁹ indicated that the general practice in such cases was to commute the death sentence, provided the suicide pact was genuine, *i.e.* that there was a genuine agreement or a genuine attempt or intention to commit suicide on the part of the survivor. If, on the contrary, the suicide pact was regarded as bogus, *i.e.* a mere device to get rid of an unwanted partner or companion, the law was allowed to take its course. Although recognizing the wide divergence in moral gravity evidenced by such cases, the Royal Commission were of the opinion 'that even the worst of them could be adequately punished by a sentence of imprisonment for life'¹⁰ and, consequently, recommended changing the law so as to make aiding and abetting or instigating suicide a substantive crime distinct from homicide and subject to a maximum sentence of life imprisonment¹¹—a proposal first made in the Draft Criminal Code of 1879, s. 183.

The Homicide Act, 1957, however, only partly follows the recommendation of the Royal Commission. Thus, s. 4 (1) provides that it shall be manslaughter, not murder, for a person acting in pursuance of a suicide pact to kill the other or be a party to the other killing himself, but adds the important proviso, in s. 4 (3), that 'nothing done by a person who enters into a suicide pact shall be treated as done by him in pursuance of the pact unless it is done while he has the settled intention of dying in pursuance of the pact'. The net result, it is suggested, is to preserve the distinction formerly drawn by the Home Secretary in relation to the exercise of the Royal Prerogative. The survivor of the 'genuine' suicide pact will, henceforward, be convicted of manslaughter with a maximum sentence of life imprisonment—the actual sentence may be as short as one year or even less. As to the survivor of the 'bogus' suicide pact, the proviso to s. 4 (3) excludes him from the general provision in s. 4 (1) so that, presumably, he will be convicted, instead, of 'non-capital' murder with a fixed sentence of life imprisonment.

Such a distinction appears to be a necessary expedient for preventing abuse, but it is doubtful if the relegation of genuine suicide agreements into a new category of manslaughter is particularly appropriate. For the incongruous position still persists, though in a slightly different form from that which existed under the old law, whereby the survivor of such a pact is guilty not only of manslaughter, generally regarded as a grave felony, but also of attempted suicide, a misdemeanour of which the Court of Criminal Appeal has recently stated (*R. v. French*, [1956] Crim. L. R. 129) that whereas

⁹ *Report*, Cmd. 8932, para. 165.

¹⁰ *Ibid.*, para. 173.

¹¹ *Loc. cit.*

it would not be right to regard it as a trivial offence nevertheless 'it was not a very serious crime'. The anomaly is, of course, of no great importance but it would have been easily avoided by creating a new substantive offence of 'aiding and abetting suicide' with the same discretionary punishment as in cases of manslaughter, as was recommended by the Royal Commission.

DIMINISHED RESPONSIBILITY AND CRIMINAL INSANITY

Not surprisingly, following earlier Government pronouncements declaring themselves unable to accept any of the Royal Commission's recommendations as to the defence of criminal insanity, the Homicide Act is silent on the amendment of the M'Naghten rules. But a major reform is instituted by the introduction into English law of the doctrine of diminished responsibility. Where a person is accused of killing another he will no longer be convicted of murder, according to s. 2 (1) of the Act, 'if he was suffering from such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility'. It will be noted that the defence is restricted to the crime of murder, unlike the Continental doctrine of diminished responsibility which is of general application to all crimes and related to both liability for conviction and punishment. When considering the advisability of importing such a doctrine into our criminal law the Royal Commission sought to distinguish between the wide 'Continental', and the narrow 'Scottish',¹² version of the defence, finally rejecting the Scottish doctrine on the ground that, being confined to cases of murder, it constituted a mere 'device to enable the courts to take account of a special category of mitigating circumstances . . . to avoid passing sentence of death . . .' In the opinion of the Royal Commission, so radical an amendment of the law was not justified for such a limited purpose.¹³

These views have been disregarded for, under the provisions of s. 2 (3) of the Act, the defence of diminished responsibility, if successfully raised, reduces the crime from murder to manslaughter, thus following the parallel provided by Scottish law wherein the crime is reduced to culpable homicide. The significance of such a consequence requires to be stated clearly, particularly in view of the surprising fact that no attention was directed to this

¹² The statement in the Royal Commission's *Report*, para. 413, that the Scottish doctrine of diminished responsibility is confined to murder, has been shown to be erroneous by T. B. Smith, Q.C., Professor of Law at the University of Aberdeen, who, nevertheless, recognizes that its principal application has been in murder cases. See [1954] *Criminal Law Review*, 500, 509, and *The United Kingdom; The Development of its Laws and Constitutions*, vol. 1., Part 2, *Scotland*, pp. 721-730.

¹³ *Report*, para. 413.

aspect of the reform when the Bill was being debated in Parliament. Assuming the defence is established and a verdict of manslaughter is returned by the jury, the trial judge has full discretion, up to a maximum of life imprisonment, as to the period of detention which he will impose. To all outward appearances, such a sentence will be served in prison in the same way as if the accused had been sentenced following a conviction for, say, motor-manslaughter, embezzlement or housebreaking, in which no question of diminished responsibility had arisen. For no provision is made in the Homicide Act for differentiating between the treatment accorded to such 'diminished responsibility' prisoners and the rest of the prison community. Provision, however, already exists under the Mental Deficiency Act, 1913, s. 9, whereby a prisoner undergoing imprisonment, if certifiable as a mental defective, may be transferred to an institution for defectives—generally to the Rampton State institution—and such person may not, under s. 64 (1) of the Criminal Justice Act, 1948, be set at large from the institution without the consent of the Home Secretary.

When it is appreciated that the words in parenthesis in s. 2 (1) of the Homicide Act also appear in the Mental Deficiency Act, 1927, s. 1 (2), as the definition of a mental defective, it seems reasonably clear that the doctrine of diminished responsibility is intended to be equated largely with mental deficiency. That there may be other cases outside the field of mental deficiency which come within s. 2 of the Homicide Act was made apparent in the Commons debate by the Attorney-General who said:¹⁴ 'It is to be borne in mind in considering the law of provocation that a person with a disability of such a nature and degree as to make him acutely sensitive might be able to show that the provocation had, because of his sensitivity, led to him having at the particular moment a disability amounting to a serious abnormality of mind' within the ambit of diminished responsibility. Such cases, it is conceived, will be the rare exception rather than the general rule. Insomuch, therefore, as statutory power already exists for the treatment of mental defectives who are convicted of criminal offences it is apparent that the principal ground for introducing the defence of diminished responsibility is the limited, albeit desirable, object of reducing the number of cases in which prisoners, destined to be reprieved, are sentenced to death. More important, so far as the substantive criminal law is concerned, is the likelihood that the new defence will offset some of the defects inherent in a strict application of the M'Naghten rules. By including cases where the accused, although not so deranged by disease of the mind as to be completely irresponsible, is shown to be suffering from any form of mental abnormality including that of arrested or incomplete mental development, the new defence

¹⁴ 561 H.C. Deb. Col. 505; 28th November, 1956.

has enlarged considerably the power of juries when deciding the question of liability for murder.

DEGREES OF MURDER

Judged by the amount of attention devoted by Parliament to its proposals, by far the most controversial part of the Homicide Act is that which lays down certain categories of murder as still requiring the imposition of the death penalty, henceforward to be described as 'capital murders', leaving the remainder to be dealt with by a fixed sentence of imprisonment for life.¹⁵ Briefly, 'capital murder' includes murder (1) in the course of committing larceny, robbery or housebreaking, (2) by shooting or causing an explosion, (3) in resisting a lawful arrest, (4) of a police officer and (5) a prison officer acting in the execution of their duty, and, finally, (6) where a person commits more than one murder or has been previously convicted of another murder. Numerous proposals for the adoption in English criminal law of such a system of degrees of murder have been made during the past hundred years, the last occasion being in 1948 when, at a late stage during the passage of the Criminal Justice Bill through Parliament the then Home Secretary introduced a new clause which would have reserved the death penalty for nine categories of murder.¹⁶ It is interesting to observe that six of these are identical with the present classification of capital murder, the categories omitted from the Homicide Act being murder in the course of a sexual offence, by the systematic administration of poison, and as a result of violence by several people acting in concert.

In 1948, as in 1956 during the passage of the Homicide Bill through Parliament, the justification for introducing degrees of murder was not based on the heinousness of the crime but on the general criterion of the maintenance of law and order and on the ability to distinguish those categories of murder in which the deterrent effect of capital punishment is likely to be more powerful than in other cases.¹⁷ Having regard to the fact that

¹⁵ To remove possible doubts as to the precise meaning of such a sentence, the Home Secretary has stated: 'Men who are sentenced in future to life imprisonment for [non-capital] murder will be liable, as are those now sentenced to death and reprieved, to be detained for the rest of their lives. I hope that it will seldom, if ever, be necessary to detain a man during the whole course of his natural life, but in considering whether the time has come for a man to be discharged successive Secretaries of State will, I have no doubt, consider, as I and my predecessors have done in relation to men who were reprieved, whether the individual can be released without danger to the public . . . there can be no question of release simply because a man has served a number of years. Release must depend upon fitness to be released' (561 H. C. Deb. 1132; 4th December, 1956). For the length of detention formerly served by prisoners convicted of murder and reprieved, see *Report of the Royal Commission on Capital Punishment*, pp. 226-7 and Appendix 3, Table 12; and for subsequent convictions in respect of serious offences committed by released murderers, see *Report*, para. 150.

¹⁶ For the full details of this proposal see Cmd. 8932, pp. 471-3.

¹⁷ See 561 H. C. Deb. Cols., 1131, 1171 and 1172.

these same reasons were advanced in support of the inclusion of 'sexual' and 'poison' murders in the Government's 1948 proposal, it was not surprising that the Home Secretary's arguments for excluding these same categories from capital murder under the Homicide Act were not particularly convincing. Much as the present writer has endeavoured to approach sympathetically the classification of murder adopted in the Homicide Act the conclusion is difficult to avoid that the case for including some of the categories as 'capital murder' is weak and riddled with anomalies and inconsistencies.

It is, of course, possible to discover a rational principle, viz., the need to protect those directly concerned with the maintenance of law and order, underlying those categories which involve the murder of police officers and prison officers in the execution of their duties and also in resisting arrest or effecting an escape from legal custody. However, the inclusion of repeated murders as 'capital murder' cannot be justified on a similar basis or on that of deterrence. Presumably, its inclusion rests on that nebulous criterion public abhorrence, a principle which, once allowed greater rein, would demand the addition of many categories now excluded from s. 5 of the Act. To discover the principal weakness of the classification closer examination is called for of those categories which include, first, 'any murder done in the course or furtherance of theft', and, secondly, 'any murder by shooting or by causing an explosion'.

As to the former, the use of the unfamiliar noun 'theft' in place of the customary word 'larceny' is entirely due to the term 'larceny' being unknown to Scottish law.¹⁸ Since the word 'theft' is defined by the Act as including 'any offence which involves stealing or is done with intent to steal' the broad effect is to extend the particular category to include murder committed in the course of larceny, robbery, burglary, housebreaking or blackmail. The terms 'stealing' and 'intent to steal' being legal phrases with a precise meaning laid down by statute and judicial decisions, it follows that the question whether a particular murder is capital or non-capital may have to be decided upon strictly technical grounds. For instance, the statutory definition in the Larceny Act, 1916, s. 1, provides that a person does not steal or intend to steal if in taking another's property the alleged thief is exercising a claim of right in good faith. The truly remarkable position, therefore, may well arise in which the imposition of the death penalty under the Homicide Act may depend upon the bona-fide character of the prisoner's claim of right. A further anomaly is to be seen in relation to murder committed in the course of burglary or housebreaking. The general

¹⁸ Of the changes introduced in the substantive law and discussed in this article, only that relating to degrees of murder applies to Scotland.

basis of these offences is the breaking and entering of premises 'with intent to commit a felony'. In the majority of cases the intention is to steal, but it is sometimes forgotten that breaking into premises with intent to ravish or to attack the occupants may equally constitute burglary or housebreaking. The position created by the Homicide Act, therefore, is to regard killing in the course of housebreaking with intent to steal, say, a silver vase as calling for the death penalty, whilst treating as non-capital murder a case of killing in the course of housebreaking done with intent to commit rape upon the lady of the house. Such anomalies, it is respectfully suggested, do not inspire confidence in the criminal law.

As to the inclusion of murder by shooting or by causing an explosion within the categories of capital murder, the case advanced by the Home Secretary¹⁸ rested on the deliberate character of such killings. These were forms of murder, he urged, in which the deterrent of the death penalty could operate effectively, because such murders necessarily involved some deliberation and where there was deliberation there was surely the opportunity for the supreme deterrent to operate. The short answer to this argument is that deliberate, in the sense of premeditated, murder can be done with almost any means. If there is any force in the Home Secretary's argument, now unfortunately enshrined in the Homicide Act, it will be to deter the deliberate murderer from committing murder with a revolver or gelignite and instruct him to choose instead a hammer, knife, poison or some other lethal weapon.

It was clearly appreciated by the Royal Commission on Capital Punishment that the crucial question in considering degrees of murder is whether it is possible to devise a rational and adequate definition of the degrees. In this article it has only been possible to advert to some of the deficiencies in the reform instituted by the Homicide Act, 1957, and the present writer would respectfully agree with the Royal Commission¹⁹ that satisfactory differentiation between degrees of murder based upon legal definitions is impossible because it permits consideration of only the legal quality of the criminal act, whereas the choice of the appropriate penalty should be based on a much wider range of considerations which cannot be defined and are essentially a matter for the exercise of discretion.

¹⁹ See 561 H. C. Deb. Col. 1172; 4th December, 1956.

²⁰ *Report*, pp. 173-4.

RESEARCH AND METHODOLOGY

(Continued from Vol. VII, p. 309)

CURRENT RESEARCH. LIII. PSYCHOMETRIC ASPECTS OF HOMOSEXUALITY.

(1) *Name of University Department, Hospital or other Institution or private person supplying the information:* Dr. T. Grygier, Senior Psychologist in charge of Department of Clinical Psychology and Research, Banstead Hospital, Sutton, Surrey.

(2) *Subject of Research:* A survey of the existing psychological tests and diagnostic techniques which aim at measuring the direction of sexual attraction, at describing the characteristics of the homosexual's attitudes, behaviour and perception, at isolating various psychological and cultural aspects of masculinity and femininity and at establishing their exact measures, and at revealing the dynamic organization underlying homosexual behaviour. A pilot study of the male homosexual by means of the Dynamic Personality Inventory.

(3) *Under whose auspices is the research being carried out?* Banstead Hospital Management Committee.

(4) *Commenced:* Summer, 1956. Survey of literature and the pilot study completed. Further work to be carried out in 1957-58.

(5) *Publication:* *Journal of Mental Science*, 1957, Volume 103 (in Press).

NOTES AND CRITICISMS

CRIME IN NEW YORK

The Annual Reports of the City Magistrates' Courts of the City of New York are of considerable interest, for they enable one to form a picture of the crime problem in that great metropolis, and to see how the courts are endeavouring to deal with it. The New York City Magistrates' Courts, as Mr. John M. Murtagh, the Chief City Magistrate, remarks in the 1955 Annual Report, 'are among the busiest tribunals in the world, and in some ways the most important. . . . Here, more than anywhere else, does the quality of America's justice earn the respect or contempt of the public.'

There are more than fifty Magistrates' Courts, and most of these are specialized according to the type of case with which they deal, as the following examples indicate: Felony Court, Narcotics Term, Girls' Term, Adolescent Court. The size of the crime problem with which they have to cope may be gathered from the fact that in 1955 these courts dealt with 2,173,624 cases involving felonies, misdemeanours, and other offences, and it is remarkable that they finally disposed of over 98 per cent. of the cases, including over 80 per cent. of the misdemeanours.

Of course, a great number of these cases were traffic offences. There are so many traffic offences that 53 electronic brains have been installed in the Traffic Summons Control Bureau to process some 8,000 traffic summonses a day,

registering 18 items of information on three different documents. Out of a total of 1,733,682 traffic cases, no less than 1,214,114 were arraignments for parking offences (resulting in 886,414 convictions).

The breakdown of crimes excluding traffic offences shows that there was a sharp rise in 1955 in the number of arraignments for misdemeanours and summary offences, compared with a slight decline in the arraignments for felonies on the figures for the previous year.

TABLE XIV
Arraignments by Offence Groups

	<i>Felonies excluding Traffic Felonies</i>	<i>Misdemeanours</i>	<i>Summary Offences</i>
1953 .	18,733	77,638	161,588
1954 .	20,646	85,526	172,273
1955 .	20,448	140,474	279,020

Apart from the possibility that any increase may only indicate an increase in diligence in apprehending and arraigning offenders in general, further examination of the statistics reveals that in particular the increase in prosecutions for misdemeanour is mainly accounted for by a drive on the part of the city health and housing authorities to enforce the laws relating to sanitation and overcrowding.

	1954	1955
Arraignments under the Multiple Dwelling Law	22,429	25,750
Under the Sanitary Law	13,725	57,515
	<u>36,154</u>	<u>83,265</u>

It will be seen that the rise in the number of prosecutions under the Sanitary Law is particularly outstanding. There is a similar explanation for the rise in the number of arraignments for Summary Offences. For in 1955 there was a sharp rise in the number of prosecutions for offences relating to 'Receptacles for Ashes, Garbage and Refuse', the number being 116,648 prosecutions in 1955, compared with 30,987 in 1954, a difference of 85,661. It would seem likely that no criminological significance is to be attached to the rise in the number of prosecutions for Misdemeanours and Summary Offences, though the zeal of the health and housing authorities is to be admired.

Turning to the felony figures, analysis reveals that in most crimes there was a slight improvement over 1954; for example, there were 281 fewer robbery cases (1,867 compared with 2,148), and there was a similar decline in arraignments for burglary: 337 fewer cases, 2,509 compared with 2,846. It appears that 1954 was a particularly bad year for crime in New York, and a graph would show that the number of felonies has in fact been fairly constant on a gradually ascending scale over the last five years. The number of sex offences and crimes of violence is exceedingly high, the number of arraignments for rape in 1955 being 835, the highest figure since 1949, and the number of arraignments for homicide other

than by motor vehicles being 314, the highest figure in the last ten years. Felonious assaults have increased by over 400 compared with 1954, and have more than doubled since 1950 (5,947 compared with 2,933). There are 215 more arraignments for narcotics offences (1,318 compared with 1,103 in 1954). This is matched by a rise of 2,340 in the number of arraignments for misdemeanours under the gambling laws.

It is difficult for an outsider to assess the significance of these figures, for there may be other explanations for a rise in the number of prosecutions than the conclusion that there has been more crime. However, it is perhaps permissible to observe that the increase in crimes of violence and sexual crimes which has been a feature of English Criminal Statistics in the last few years is also paralleled in New York, though it appears that the scale on which such offences are committed in that city far exceeds anything to which we are accustomed in this country.

Socialized Court Procedure

The City Magistrates' Courts of the City of New York have gone a very long way towards adopting what is described as a socialized court procedure. This phrase is used to describe the system whereby, to use Mr. Murtagh's words, 'the main object of the courts has become not to punish but to help the offender.' With this in view, there has been since January 1953 a Social Division of the Magistrates' Courts, responsible for the wide range of special courts which have been established to meet particular needs. 'These social courts,' we are informed, 'recognize that punishment does not contribute to the solution of a social problem. They are concerned not so much with the offence itself but rather with whether or not the person before the court requires special care and with the nature of his or her specific needs.' It is pointed out that this re-orientation of approach by the courts is 'as yet limited and is characterized by improvisation and necessary compromise' (1953 Annual Report). It is interesting to read in the 1955 Report that the principle that society, through the courts, has an obligation not only to punish but also to help, 'which has become standard in matters involving juveniles', is winning increasing support in reference to the problems of adults. 'The work of a Magistrate,' says Mr. Murtagh, 'is a running battle between his own understanding, aided by whatever reinforcements he can summon from medical science and the social sciences, and the social ills that daily assault his bench.' The principle of trying to help rather than to punish is being applied 'to family problems, to the delinquent teen-agers, to adolescent drug users, and even to the alcoholic derelict. With improved facilities, this principle must be applied far more extensively—to the prostitute, to the sexual deviate, to the adult drug addict, and yes, even to many felons.' This is a noble ideal, but the Chief Magistrate has no illusions. 'Obviously, there are criminals beyond our help. These must be segregated.' Recognition of this limiting factor does not prevent attention being given to the possibilities of rehabilitation. 'Much greater interest must be developed . . . in the restorative possibilities of our courts to deal with those not beyond our help.'

Strenuous efforts are being made by the correctional authorities in co-operation with the Magistrates' Courts to deal with the special problems of the alcoholic, the drug addict, the delinquent girl, and so on. The Annual Report for 1953 describes the measures taken to tackle alcoholism, the Report for 1954 outlines the reform of the Women's and Girls' Courts. The progress which has been made

in the last few years has been most striking. That a great deal remains to be done to provide adequate probation and social and medical facilities does not detract in any way from the merits of what has been achieved already. When Professor Tappan comes to re-write his text on 'Juvenile Delinquency' he will find much that has been changed. Whether the substance of his criticisms of New York court procedure still holds true remains to be seen. One thing is clear, however, and that is that the very size of the problems must influence the procedure adopted and the extent to which success is achieved.

J. E. HALL WILLIAMS.

CRIMINAL STATISTICS, 1955

The general picture given by the Criminal Statistics does not differ greatly from that of the previous year. There was an increase of 1 per cent. in the total number of indictable offences known to the police. This however gives a slightly over-favourable impression since for the first time certain offences of malicious damage to property, where the amount of the damage does not exceed £20, are excluded. Previously these were included under the heading 'Other offences' and their omission accounts for 80 per cent. of the apparent decrease in that group, but even if all 'other offences' were excluded, the total increase would not exceed 2 per cent. The proportion of crimes cleared up was 48.7 per cent. compared with 49.2 per cent. in 1954.

The downward movement since 1951 in the number of cases of larceny known to the police was reversed in 1955, the figure being about 3.5 per cent. above that for 1954. With burglary there was a decrease of a little over 1 per cent. The increase in sexual offences and violence against the person still continues.

Judging from the figures of persons convicted, the increase in larceny is due chiefly to the 17-21 age group, the numbers convicted being 11 per cent. higher in 1955 than in 1954. In spite of this, this is the only age group where the figure of convictions for larceny is less than in 1938. In sexual offences, the increase over 1954 is almost entirely amongst adults over 21. The figure for children shows a decrease of 19 per cent., whilst with young persons and young adults under 21 the figure is nearly stationary (- 1 per cent. and + 1 per cent. respectively). On the other hand it is the 17-21 age group which shows the biggest increase in violence against the person, whether compared with 1954 or with 1938.

In considering the relative position of the different age groups, it is necessary to keep in mind the much greater extent to which police cautions are used with the younger offenders; nearly 6,500 children (boys and girls) were cautioned and approximately 2,100 young persons. The figure in the case of boys under 14 is 27 per cent. higher than in 1954 and of male young persons 23 per cent. With girls under 14 the increase is 35 per cent.

Ignoring any differences introduced by this growing practice of cautioning, the number of boys under 14 guilty of indictable offences has fallen from 965 in 1954 to 924 per 100,000. Compared with the peak year of 1951, when the corresponding figure was 1,503, there was a decrease of 30 per cent. The increase compared with the pre-war figure was down to 16 per cent. The over 30's also show a slight decrease compared with 1954 (from 250 to 243 per 100,000 in the case of males), but the group between 14 and 30 all show some increase over 1954, reversing the

trend of the previous years. The peak age with boys still remains at 14. With girls the worst ages are 14 and 17.

The methods used in dealing with persons convicted of indictable offences changed little during the year. The proportion put on probation hardly changed and there was a slight increase in the proportion of adults fined and a slight decrease in the proportion sent to prison.

W. A. ELKIN.

CRITICAL NOTICES

CAPITAL PUNISHMENT

A LIFE FOR A LIFE? The Problem of Capital Punishment. By Sir Ernest Gowers. (London: Chatto and Windus. 1956. Pp. 145. 7s. 6d.)

CAPITAL PUNISHMENT AS A DETERRENT AND THE ALTERNATIVE. By Gerald Gardiner, Q.C. (London: Victor Gollancz. 1956. Pp. 95. 6s.)

CAPITAL PUNISHMENT, THE HEART OF THE MATTER. By Victor Gollancz. (London: Victor Gollancz. 1956. Pp. 23. 1s.)

REFLECTIONS ON HANGING. By Arthur Koestler. (London: Victor Gollancz. 1956. Pp. 193. 12s. 6d.)

MURDER STORY. By Ludovic Kennedy. (London: Victor Gollancz. 1956. Pp. 160. 13s. 6d.)

PITY THE INNOCENT. By Ethel Mannin. (London: Jarrolds Ltd. 1957. Pp. 256. 15s.)

THE CASE OF TIMOTHY EVANS. By Lord Altrincham and Ian Gilmour. (London: The Spectator Ltd. 1956. Pp. 26. 1s. 6d.)

The campaign for total abolition of the death penalty in Great Britain would seem for the moment to have failed although a total abolition Bill passed through the House of Commons on a free vote. This was rejected by the House of Lords, and various parliamentary devices were deployed to prevent any second chance being given to that Bill. The Government instead introduced its own Homicide Bill, a measure which very cleverly introduced long-needed reforms of the law with regard to murder and tacked on to them an absurdly illogical effort to limit the death penalty to those particular murders which were 'most dangerous to law and order'. Even the House of Lords was not allowed to amend this and a mild elder statesman like Lord Samuel was moved to protest that they might as well adjourn the House and go home as stay there discussing amendments which there was no intention of accepting.

But the campaigners need not lose heart; the campaign of 1948 ended when the House of Commons supported abolition, the House of Lords rejected it, and an effort to find a hasty compromise was unsuccessful. Out of those debates however came a disturbed national conscience, statements by (*e.g.*) the Archbishop of Canterbury to the effect that we could not return to the *status quo ante*; and the eventual appointment of a Royal Commission to see what compromise could be found. The result is now visible; the commission found many compromises but was forbidden to recommend abolition; its compromises were first rejected out of hand by the Government, but public opinion and the House of Commons have

forced the moves which have now produced the Homicide Bill. And there will be few, if any, more executions in this country. That is how things work—the climbers make ground and then are beaten back, but their tracks remain and the next climb succeeds. No doubt after a few years of the compromise, with any execution attracting undue limelight, the death penalty will finally disappear. Then the campaigners of the last two years will have their due reward.

One excellent result of the recent campaign has been a spate of new literature on the subject, to meet a new interest in it. And one of the most telling contributions is that of Sir Ernest Gowers, for he was Chairman of the Royal Commission. He sought loyally to find a compromise, the efforts of his colleagues and himself seemed to have been in vain, and after two years of silence he spoke—to reveal in this book that his experiences with the Royal Commission had brought him to support total abolition of the death penalty. Sir Ernest Gowers states his views quietly, soberly, with great dignity and (as would be expected from the author of *An A.B.C. of Words*) in impeccable prose. His book is a short but complete study and one to recommend to the doubters who are likely to be put off by the writings of the more obvious propagandists.

But the propagandists as a whole have in this field never overstated their case; they have argued on the model of Roy Calvert whose *Capital Punishment in the Twentieth Century* remains the classic standard text book on this subject. The facts are irrefutable, the arguments incisive and so completely damning that they need no hammer to force them home. Gerald Gardiner has followed this tradition and his book is one of facts and evidence marshalled against the imaginary defender of capital punishment. Gerald Gardiner is a lawyer and he has enjoyed putting his opponent in the box and forcing him to reveal his defences, only for them to be demolished one by one, quite fairly but quite unanswerably. In this *Journal* where scientific approaches to the problems of delinquency are the general rule, this book has its right place amongst the reviews for it is a truly scientific analysis of the case. It will stand and serve its purpose until capital punishment has finally gone.

Victor Gollancz threw his energies into the abolition campaign and wrote, straight from the heart, the small pamphlet *The Heart of the Matter*. It is to be read quickly; in fact it was written quickly and the reader cannot help himself as the argument tears along. It is a good short statement making full use of sentiment and emotion. Arthur Koestler comes in with his own peculiar power and energy, to rehash most of the familiar arguments and to give an extra turn of the thumb-screw to the Judges and the Lords. He does not believe we should be mealy mouthed about so foul a business as capital punishment, and as he was himself once sentenced to death, he speaks with a feeling none of the rest of us can share. His book also races along, so rapidly indeed that errors of fact were never corrected, and he does leave occasional chinks through which his opponents might seek to squeeze something of a defence of their case.

And to make a change from argument, scientific, emotional or otherwise, we have two different approaches to the subject, both based indirectly but unmistakably on recent cases. Ludovic Kennedy takes us to a home which could easily be that of Derek Bentley, from which a simple-minded son has been led to murder. The youth in prison, the mercifulness of the prison officers on that dreadful death-watch of theirs, the efforts of a chaplain, are all well done with sympathy and understanding of what the death penalty means to those concerned in it, whether

or not they agree with it. Finally on the morning of the execution we are back in the small home of the murderer, with the victim's mother and the murderer's mother consoling each other, which, incidentally, is not at all far-fetched. The play did not run for long in London, but it is as moving to read as it was to see, and while it is sufficient in itself, Kennedy adds a useful postscript of argument for the benefit of those who come to the subject anew through this play.

Ethel Mannin, never lacking in sympathetic imagination, put her mind on the problem of the infant child of Ruth Ellis. She is dead, her child remains. In this novel the child grows up to ask questions and his failure to understand leads to his own undoing. This is not the place to discuss the literary merits of the book. It is fiction, sentimental, purely imaginative, and yet it has its place and will play its part in the moving of that public opinion which lumbers along so slowly, while the reformers work so hard to gain each inch.

One other execution will also be remembered as having its ultimate effect on the history of capital punishment; that of Timothy Evans who lived in the same house as a man now known to have been a multiple murderer, whose evidence was the chief factor in the condemnation of Evans. The doubts about the justice of the Evans verdict will never be removed, and while his life cannot be restored, Mr. Gilmour and Lord Altrincham are concerned that at least his name should be cleared. Their brief pamphlet restates the known facts of a very disturbing case, without which no study of capital punishment can be complete. It is a strange thought that some time in the future it will be realized that the deaths of Evans, Bentley and Ruth Ellis brought about the end of executions in this country.

FRANK DAWTRY.

TRIAL BY JURY. By the Honourable Sir Patrick Devlin. (London: Stevens & Sons Limited. 1956. Pp. viii + 179. 15s.)

As a criminal judge Mr. Justice Devlin is now probably as well-known as the Lord Chief Justice, but only those who have followed his judicial career closely will be aware of the great contribution which he is making to our criminal jurisprudence. The Hamlyn Trust are to be congratulated on having secured his services for the 1956 series of Hamlyn Trust lectures, which were delivered at the University of London. For this gives a wider public an opportunity to become acquainted with the extraordinary breadth of vision and depth of understanding of this truly remarkable judge, and this in connection with an analysis of one of our most cherished and incomprehensible institutions, trial by jury.

The author begins by saying that trial by jury is not a subject on which it is possible to say anything very novel or very profound, yet he proceeds in the space of four brilliant lectures to refute this statement by saying a great deal that is both exceedingly novel and extremely profound. He shows how absurd the idea of the jury really is in theory, and yet how reasonably and indeed admirably this institution works in practice. Nothing illustrates the English genius for developing and adapting institutions quite so well as the history of the jury, and its relations with the judge. The seemingly impossible task which is entrusted to a dozen casually enlisted persons who are 'predominantly male, middle-aged, middle-minded and middle-class', is made possible only by the exclusion of many questions from the jury's consideration and by the extensive guidance given by the judge at every

stage, and the control which he exercises over the whole proceedings. There is a very real sense in which the judge tries the case in this country, but the jury, who are kept in a very subordinate rôle throughout the trial, come into their own at the end of the proceedings, and no-one can cross-examine them as to the reasons for their decision. It is possible to overthrow a verdict if no twelve reasonable men in the opinion of the court could have arrived at this decision, and there must be a minimum of evidence before the case is left to them at all. But between these two poles, within these confines, they are sovereign and inscrutable.

Not every country which employs the jury system regards the jury as an oracle whose verdict is to be respected in this way, nor are jurymen treated as divinely chosen and their verdict as shrouded in mystery. In the United States there is a practice of extensively interrogating potential jurors with a view to eliminating prejudice before those finally selected are sworn, whereas in this country the right of challenge is hardly ever used and the selection receives too little attention. Again, the practice of trial by the press has gone very far in the United States, and evidence held legally inadmissible one day has appeared in the press the next day, not to mention publishing interviews with jurors after the verdict. Mr. Justice Devlin deals charitably with these aspects of American criminal jurisprudence, but does not regard them favourably.

That the learned judge does not feel it necessary to criticize the method by which the English jury is selected only from those satisfying a property qualification suggests a conservative outlook, but this is an intelligent conservatism which one can admire even if one cannot share it. He reflects that maybe it is because the jury is drawn predominantly from one class that the unanimity rule is workable, and says that 'if unanimity is insisted upon . . . it is no doubt right that juries should be taken out of the middle of the community where safe judgment is most likely to repose' (page 23). Yet in the same breath he refers to the extreme difficulty of obtaining convictions of motorists for dangerous driving, and recognizes the possibility that 'the small tradesman who owns a motor-car plays too large a part in the jury system'. We are a nation of shop-keepers, we have been told, and it was Dicey who said that freedom of speech in England was the liberty to say anything which twelve shop-keepers permitted. Yet the jury has practically disappeared in civil litigation, as the author demonstrates, and the majority of libel cases nowadays are tried without a jury. Does this decline of the civil jury indicate that something is seriously wrong? It is apparently on the grounds of the greater uncertainty and fear of the greater costs that litigants no longer wish for jury trial in civil actions. Many cases concern claims for damages for negligence by motorists or by employers, and in these cases there is great pressure for uniformity of decisions in like cases. The judge is better equipped to ensure this, hence the decline of the jury. It might be desirable to allow majority verdicts subject to certain safeguards, as has been done in many states of America and in Australia, and the judge suggests that this might help to bring about the revival of the use of juries in civil cases. But, in his view, in criminal cases it is clearly undesirable that the verdict should be based on anything but complete unanimity.

The conventional way of describing the allocation of duties between a judge and jury is to say that the judge decides all questions of law and the jury all questions of fact. It is not generally realized how misleading this statement is, but in Chapter 4 the author shows how many questions of fact are withdrawn from the jury because it is felt that it would not be safe to let them decide them. The

importance of the summing-up in an English jury trial is well explained, although the delicacy with which the author refers to the judge's right to comment on the evidence leaves a great deal unsaid, which can only be filled in from experience. Whether the verdict which emerges at the end of a jury trial is likely to be any sounder or more perfect than that which could be reached by the shorter route of trial by the judge sitting alone is debatable. It cannot be denied, however, that the jury enables the law to adjust itself to the exigencies of life in a most humane manner, and it is in this realization that we are prepared to tolerate it, however grudgingly. The jury is, as Mr. Justice Devlin remarks at the end, 'more than an instrument of justice'. It is a vehicle of mercy, and, to mix the metaphors more thoroughly, 'it is the lamp which shows that freedom lives'.

J. E. HALL WILLIAMS.

REVIEWS

TREDGOLD'S TEXT BOOK ON MENTAL DEFICIENCY. By R. F. Tredgold, M.D., D.P.M., and K. Soddy, M.D., D.P.M. Ninth edition. (London : Baillière, Tindall and Cox, Ltd. 1956. Pp. 480. 40s.)

For half a century A. P. Tredgold's Text Book was the standard work on this subject in the English language. It must have been a labour of devotion for his son to bring this classic up to date with the help of Dr. Soddy.

The work was largely rewritten because much has been done in recent years throughout the world in the genetic field and in the field of social medicine, not only to cast a new light on etiology but to give a new outlook on the treatment and social management of the defective population. In addition, the development in general psychology has given us statistical standards and techniques for the testing of general and special abilities which have to be taken into account not only in the classification of mental defect, but in the possibilities of rehabilitation, particularly of the higher defective groups. In consequence, this volume is now an extremely valuable work not only for those who are directly concerned with the diagnosis and management of the defective, but for all those who are concerned with the remoter effects of defect, *i.e.* in the field of delinquency and of education.

The only shortcoming of this work—if one dare use such a word—lies in the somewhat sketchy nature of the material dealing with mental testing.

In the immediate future, there is no doubt that legislation will alter much regarding the problems of certification and the sociology of the defective, and one can be sure that when the next edition is published this new approach will be taken into account, which will make this work the outstanding one of its kind.

E. M.

MENTAL HEALTH AND MENTAL DISORDER. A SOCIOLOGICAL APPROACH. Edited by Arnold M. Rose and eight others. Forty-six contributors. (London: Routledge & Kegan Paul Ltd. International Library of Sociology, 1956. Pp. 626. 40s.)

The aim of this mosaic contribution is to cross-fertilize systematically the fruits of psychiatry with those of social studies. It is only in the last 25 years that any attempt has been made to consider the social implication of mental disorder as well as the social ætiology of mental deviations. In fact, as these essays by many distinguished specialists show, there is still no uniformity and the vocabularies of the two disciplines are not entirely wedded.

The combined essays are grouped under seven heads: Social Psychiatry and Theoretical Overview; Social Characteristics of the Mentally Disordered; Mental Disorder and the Community; Sociological Approaches to the Study of Specific Disorders; Social Psychology of Personality Organization and Disorganization; Sociological Approach to Problems of Marginal Disorder (this section is concerned with delinquency and allied problems) and, lastly, Contributions to the Understanding of Mental Health.

The essays are all by American writers from all the cognate disciplines and are naturally coloured by the vocabulary of American sociologists and the problems of the American scene. Ethnic factors occupy a considerable part of the studies which are gathered together from a variety of scientific journals; a few were specially prepared for this volume.

The volume covers so many aspects of man's place in society and the factors responsible for his social intercommunications that many papers merit critical appraisal on their own. Nevertheless, the outstanding issue is the question of the emergence of a social psychiatry proper. There is clearly a mutual stimulation, e.g. psycho-analysis of the social sciences despite differences as to their theories of social origin.

A number of problems have emerged centred around this personal problem of man in society, but it is still somewhat dubious as to whether a new discipline of a specific nature has yet evolved which can be called social psychiatry, while there are several differences of approach from the various disciplines which throw a light on man and his social nature.

In many ways psycho-analysis has a closer relation to the social sciences than to the so-called fixed sciences. Many of the papers here displayed illustrate the fact, particularly in the field of ecology, that mental deviations occur as a result of local conditions of a social and economic kind. There is evidence that there *are* differences of incidence in the major mental disorders arising from conditions growing out of a locality. Furthermore, it is important for social scientists and for psycho-analysts in particular to be cognisant of the enormous cultural differences which occur in the local patterns, and which investigators cannot fully understand unless they saturate themselves in the life of the culture which they are studying.

Perhaps future research will show that it is the marginal problems, where sociology and psycho-analysis impinge upon one another, that will reveal in their solution the true nature of man in society and help us to realize to what extent field properties produce a profound effect upon the psychical economy of the individual.

It is clear, therefore, that students of psychiatry and of delinquency, in particular, will profit by reading the articles in this volume as they will help them to maintain a critical attitude not only in their own subject, but in what is called a multidisciplinary approach. This approach is becoming increasingly important wherever team work is used, and members of the team must learn not only to understand one another's language, but to modify their own concepts in the light of these wider contacts.

E. M.

THE CHILD AND THE FAMILY. By D. W. Winnicott. (London: Tavistock Publications Ltd., 1957. Pp. 147. 12s. 6d.)

This small volume, big in its implications and usefulness, is an edited version of the author's talks to mothers on the wireless from 1944 to 1955. There are few pediatricians of note who are also psychoanalytic practitioners. Dr. Winnicott, in his professional career, has woven together the two disciplines with great skill and it has given him an insight into the life of the babe and the nursing mother which is quite unique. There are admittedly basic assumptions in his exposition springing from a Kleinian analytic view of the child, but these assumptions are expressed in a manner which wins sympathy if not our unquestioning acceptance, and the listening hosts of mothers and prospective mothers and maternity nurses must have been both impressed by and proud of their rôle. At times a little rhapsodic, but the sincerity of the author is beyond all critical doubt.

The author deals in non-technical language with a number of vexatious problems of childhood, *e.g.* normality, the only child, lying and stealing, adoption and visiting children in hospital. In all these Dr. Winnicott brings his psychoanalytic experience to the common man and woman in the language of everyday life. Recondite theory becomes easy of comprehension through the attractive simplicity of his mode of communication. A very valuable book for psychiatrists, nurses, social workers as well as parents.

E. M.

MOBILIZING COMMUNITY RESOURCES FOR YOUTH. By P. H. Bowman, R. H. DeHaan, J. K. Dough and G. P. Liddle. (University of Chicago Press, Supplementary Educational Monograph. No. 85. 1956. 138 pp. 19s.)

This is the third of a series of progress reports describing a ten-year programme of action-research and continues the story up to the end of the fourth year of the project. The basic general hypothesis is stated as: 'An average American community with its own resources of persons and finances can significantly improve the mental health level and the extent of the use of the talent of its children when interested persons in the community are given information and training in scientific methods of human development.' To test this hypothesis all the children in the fourth grade (*i.e.* aged 9) in the schools of Quincy, Illinois (population 44,000), were screened for maladjustment and for exceptional talent. Of 602 children tested, 103 were put on the 'priority' list for maladjustment, and 96 for talent.

The action part of the project consisted of the training of teams of volunteers who were given the task of seeing that the children received appropriate treatment. The present report seems to indicate that this has not proved a successful venture.

Despite the fact that many of the volunteers were people likely to be helpful and understanding about children, *e.g.* teachers, nurses, youth leaders, etc., and although they were given a year's part-time training, it was found that the work of putting the children into touch with the appropriate sources of treatment and of establishing contact with their families could not be satisfactorily done by volunteers and had to be taken over by the professional staff of the project.

To select the maladjusted children the Quincy Youth Development Commission used in particular a Behaviour Description Chart, to be filled in by teachers (which appears to be rather like an abbreviated version of the diagnostic chart devised in this country by Dr. D. H. Stott), and a 'Who are they?' sociometric test completed by children about their peers. Of the maladjusted children about half are described as aggressive and half as withdrawn; these characteristics are correlated with age, number of children in the family, parental situation, death and divorce in the family, social status of the school and geographical mobility of the family. From this it emerges that 'the aggressive children are much more likely to come from families in which they live with a parent and step-parent than the withdrawn'; that 'parents of aggressive children have often resolved their differences by breaking up the family, whereas the parents of withdrawn children have only two-thirds the number of divorces found in the general population'; and that 'the families of aggressive children, though they have moved in general much less than the average for the total population, have done much more moving about *within* the city than has any other group'.

PETER KUENSTLER.

THE ADOLESCENT IN BRITAIN. By Leslie T. Wilkins. (London : The Social Survey. 1955. Pp. 117. No price stated.)

This is a mimeographed report on a nation-wide survey of civilian young persons between 15 and 19 years of age. It is essentially a source book which should be of considerable value to those interested in juvenile delinquency. It presents a picture of adolescents in terms of certain main characteristics—home background, education, employment and leisure pursuits. Its usefulness is that it provides a standard against which delinquents in this age group may be measured. For example, it is now possible to state the numbers of adolescents of different ages whose mothers go out to work; similarly how many writers who stress the importance of the broken home as a delinquency-producing factor know that 18 per cent. of normal adolescents come from households in which they have only one parent or none at all?

The most extensive section is concerned with questions of employment, and the existence of a 'problem group' of adolescents is inferred from the relationships among certain characteristics such as 'excessive job changing', 'no affiliation to clubs or similar groups', 'excessive cinema attendance', etc. Altogether this is a valuable addition to our knowledge of the behaviour and interests of adolescents.

J. P. MARTIN.

THE LAW OF PRIMITIVE MAN: A STUDY IN COMPARATIVE LEGAL DYNAMICS. By E. Adamson Hoebel. (London: Cumberlege, 1954. Pp. 357. 45s.)

This book embodies the result of long and detailed research on the subject of law among American Indians and other primitive communities; it combines theoretical exposition and text-book teaching which is likely to be required reading for many years to come. In the first section Professor Hoebel deals with problems of definition and analysis. Although clearly and vividly written, this contains a good deal of pedestrian presentation; in particular, the chapter on research methods and techniques is likely to strike professional anthropologists as somewhat naïve. On the other hand, his discussion of 'What is Law' and his interesting recommendation that Hohfeld's fundamental legal concepts be used in the analysis of primitive law, are written with a clarity that is both stimulating and enlightening. Professor Hoebel's approach is substantially in line with the current trend in anthropology to look for terms which give a more precise description of actual rights and duties.

In the second section the author examines the legal systems of five different peoples: Eskimo, Ifugao, three Plains Indians groups, Trobrianders and Ashanti. The societies are arranged in order of the complexity of their legal structures and the relative predominance of public over private law. In doing this, Professor Hoebel does not mean to imply that the sequence is a necessary linear development from one to another; as he himself says later: 'There has been no straight line of development in the growth of law'. The best chapter is undoubtedly that in which he deals with material collected by himself. He realizes that in discussing Trobriand Law he must also deal with Malinowski's ideas on the subject and on the whole he deals fairly with them. The least satisfactory chapter is that on the Ashanti; developments in the Gold Coast seem to have been misunderstood in a number of ways. Most important is the misinterpretation of Ashanti political structure. To describe it in terms of constitutional monarchy is inaccurate; the Ashanti kingdom was in many ways a federation and many of the procedural devices in their legal system depend on this.

In the last section Professor Hoebel discusses the general nature of law and its relation to religion and magic. His implicit view that law is but one aspect of the total organization of social life is one that is in agreement with current anthropological thinking in England. The concluding passages which pursue the development of international law must be taken to express his personal philosophy and must be evaluated as such.

The writing of this book is vivid and, although much scholarship has obviously gone into it, not pedantic; it is therefore distressing to find inaccuracies and what amount to wild assertions occurring at certain points. The statement on page 134 'Her brothers gave her away in exchange for a consideration', virtually ignores the existence of a large and well-documented body of literature on the subject of bride-wealth; the surprising assertion that 'epicurean cannibalism' is found in Africa is entirely unsupported by references to the source of the information. Despite these criticisms, 'The Law of Primitive Man' is probably the best general text-book of its kind.

J. LA FONTAINE.

PORTRAIT IN GREY. By Norman Hignett. (London : Frederick Muller Ltd. 1956. Pp. 271. 16s.)

Amongst recent books by ex-prisoners, 'Portrait in Grey' is outstanding. The author draws a vivid minute-by-minute account of prison life such as no other ex-inmate of an English jail has produced for a very long time.

Despite some efforts to be objective, both his presentation and his comment are frequently unfair. Many of the recommendations on prison reform which are put forward at the end of the book—though they at least show the desire to be constructive—are naïve and unrealistic. But having said all that, it must be stressed that this is a book of considerable value to the serious student of penology for the light it sheds on atmosphere and on inter-personal relations, not least on the relations between the Governor and his staff. 'A prison', writes Mr. Hignett, 'is still a feudal demesne over which the Governor reigns not only supreme but as an overlord vested with absolute power. Such checks as exist . . . are ineffective and inoperative in practice'.

'Portrait in Grey' is a book that ought to be read by every member of the Prison Service. Copies of it ought to be available at the Imperial Training School, particularly for those who take refresher courses and are in a position to sit back for a moment and assess the good and the bad in the Service. It is a book that will annoy many but it would be wrong to condemn it merely because it is not always accurate or fair. There is sufficient truth in it to show the gap between benevolent penal theory and the hard reality of prison life as it impinges upon a sensitive and intelligent person. Those who are genuinely and conscientiously concerned with the good of the Service cannot afford to ignore this gap.

H. J. KLARE.

ABSTRACTS AND REFERENCES

(Contributed by : W. R. Bett, W. J. Bolt, J. E. Hall Williams,
J. P. Martin, and J. C. Spencer.)

CRIMINOLOGY

MARC ANCEL: 'Le Crime Passional', *The Law Quarterly Review*, 1957, 73, 36-47.

This article embodies the substance of the sixth biennial lecture, which was delivered by M. Marc Ancel, Judge of the Supreme Court of France, on the invitation of the Department of Criminal Science, at the University of Cambridge on 19th October, 1956. The author shows how the romantic idea of the *crime passionnel* which was entertained at the end of the nineteenth century, and was encouraged by the Italian school of criminology, has given place to a more sober and realistic assessment of the many factors which may account for such an offence. It is now recognized that 'this crime can very often be accompanied by premeditation and that the motives from which it springs can often present a curious mixture of cupidity, egoism and a warped sense of justice'. Furthermore, 'in so far as it be admitted that *crime passionnel* may be the outcome of unbalanced mind or intense emotion, it confronts us with wider implications than the rather simple crime of amorous jealousy, its traditional type'.

The author examines the extent to which the classical criminal law took into account that an act may be committed under the overwhelming force of passion

or violent emotion, and considers the way in which twentieth century criminal codes have developed special provisions for crimes of passion. He observes that modern laws are far from being at one on the subject, and that the tendency is not to broaden the ground of exemption or attenuation but, while recognizing there is such a defence, to circumscribe it within narrow legal confines. Moreover, it is suggested that the criminal courts themselves have modified their willingness to recognize the *crime passionnel*. Since the second world war, M. Ancel believes that 'the number of *crimes passionnels* has substantially declined and that the number of acquittals or of too lenient sentences has considerably decreased'.

The article concludes with the following summary: 'During the last century there was a tendency to forbear from punishing *crime passionnel*; this attitude seemed to be reinforced by the positivist school of criminal law, which provided it with its first scientific analysis. At the beginning of the twentieth century, criminal legislation seemed to be moving in the direction of according the *délinquant passionnel* special and mitigated treatment. But one after another the scholar, the legislator, and ultimately public opinion itself, revolted against this too facile solution. The scholar traced the *crime passionnel* back to its fundamental causes, which proved it to be no longer radically different from ordinary crime. The legislator, in his turn, admits cautiously certain mitigations of the ordinary penalty, but within defined limits. Finally, the *criminel passionnel* is on the way to losing his glamour in the public regard'.

J. E. H. W.

AMERICAN LAW INSTITUTE: 'Responsibility', *The Journal of Criminal Law, Criminology and Police Science*, 1955, 46, 450-484.

This article was prepared by the Reporter, Herbert Wechsler, of Columbia University School of Law, and submitted to his advisory committee, the Council of the American Law Institute. It consists of a draft penal code dealing with Responsibility and includes some comments on the problem of defining the criteria of irresponsibility. Three appendices cover: (a) the criteria of responsibility under existing law; (b) a statement by Dr. Guttmacher on the principal difficulties with the present criteria of responsibility and possible alternatives; and (c) excerpts from correspondence between Dr. Guttmacher and Herbert Wechsler on this subject.

It is an article of great importance.

J. C. S.

'Symposium on Mental Responsibility and The Law', *Kentucky Law Journal*, Winter 1956-57, Vol. XLV, No. 2.

This symposium consists of seven contributions from experts in criminal law, medicine, psychology, psychiatry, and philosophy. Of particular interest are the articles on criminal law by Professors Roy Moreland and Sidney J. Kaplan, and the contribution of Dr. Otto E. Guttentag entitled 'Prison v. Closed Ward: Their Philosophical Relationship'.

J. E. H. W.

ANON: 'The Significance of Penalty Provisions of the Florida Criminal Statute', *University of Florida Law Review*, 1957, X, No. 3.

A criminological assessment of the State's new criminal code.

W. J. B.

PROFESSOR LONDO BROWN: 'The West Virginia Habitual Criminal Law', *The West Virginia Law Review*, 1957, 59, 30.

A study of legislation directed to problems of recidivism.

W. J. B.

PENOLOGY

ANON: 'After-care in Corrective Training', *Justice of the Peace and Local Government Review*, 1956, **120**, 470-472.

The author of this anonymous article has for three years lectured to the discharge class at the Corrective Training Prison at Camp Hill. During that time he has been able to study the needs of the prisoners prior to discharge on licence. Under the Criminal Justice Act 1948, a sentence of corrective training is for a fixed period of not less than two years nor more than four years, and if the person is released before the expiration of such sentence as he may receive, the training is followed with a period of supervision on a 'positive' licence. This is a licence involving certain conditions about residence, employment, and reporting regularly to the Central After-Care Association. The writer discusses the problems of the prisoner on discharge, as revealed in his discussions with the men. Some figures are given of the numbers and ages of persons released from corrective training in 1953 and in 1954, derived from the annual reports of the Central After-Care Association, and a table is included giving details of four cases released, only one of whom was not reconvicted subsequent to completion of the licence.

J. E. H. W.

ROBERT S. W. POLLARD: 'Prisons in China', *The Criminal Law Review*, 1956 (November), 740-750.

Mr. Pollard reports on his impressions of penal institutions in China which he visited with a party of lawyers from England, France and Belgium. They visited China in April 1956, at the invitation of the Chinese Political Science and Law Association to study the Chinese legal system.

J. E. H. W.

GORDON ROSE: 'The Magistrate and the "Short, Sharp, Shock"', *Justice of the Peace and Local Government Review*, 1957, **121**, 126-128.

This article reviews briefly the system of detention and attendance centres, and discusses the implications of the 'short, sharp, shock' theory for the magistrate. After explaining that the régime at such centres is predominantly intended to make the offender heartily dislike the whole operation and resolve never to suffer it twice, Mr. Rose suggests the conditions essential to the success of such an experience, and has some wise comments on the selection of offenders by the magistrates for such sentences, and the importance of a thorough pre-sentence inquiry into the offender's circumstances.

J. E. H. W.

PSYCHIATRY

ELEANOR T. GLUECK: 'Spotting Potential Delinquents: Can it be Done?', *Federal Probation*, 1956, **20**, 3, 7-13.

Describes some of the Glueck prediction tables and discusses some subsequent studies which have made use of the tables. It is claimed that these have shown the tables to have been remarkably successful.

J. P. M.

RAYMOND G. MCCARTHY: 'Alcoholism Treatment Programs: Progress and Problems', *Federal Probation*, 1956, **20**, 3, 44-5.

Discusses recent literature and practice in the treatment of alcoholism.

J. P. M.

LA MAY ADAMSON and H. WARREN DUNHAM: 'Clinical Treatment of Male Delinquents: A Case Study in Effort and Result', *American Sociological Review*, 1956, **21**, 312-320.

This study of the effectiveness of psychiatric treatment given to juvenile delinquents is based on a random sample of 800 cases in the court-affiliated Wayne County Clinic for Child Study, in Detroit, Michigan. The findings support the authors' hypothesis that treatment of juvenile delinquents in varying degrees does not serve to prevent them from becoming adult offenders. The reason for this is not because therapy is of no value but rather because the Clinic is forced to operate with patients who constitute the poorest risks for any kind of treatment programme.

J. C. S.

KENNETH W. CHAPMAN: 'Drug Addiction: The General Problem', *Federal Probation*, 1956, **20**, 3, 39-44.

Surveys drug addiction in the U.S.A. emphasizing its cyclical nature. Recent research has shown that conventional views of the problem need some revision, and that there is a fair amount of drug-taking that does not lead to addiction.

J. P. M.

FORENSIC PSYCHIATRY

EDWARD GLOVER: 'Delinquency Work in Britain: A Survey of Current Trends', *The Journal of Criminal Law, Criminology and Police Science*, 1955, **46**, 172-177.

Dr. Glover continues his survey of criminology in Britain which he had previously published in 'Searchlights on Delinquency'. In the post-war world there were two incentives to change, war-time development in psychology and psychiatry and the increase in crime and delinquency. Recent developments at the I.S.T.D. have provided means whereby modern trends in delinquency research can be estimated. There has been an increase in the popularity of group surveys but a deficiency in purely clinical investigations and particularly of psycho-analytic studies.

J. C. S.

B. SÖDERLING: 'Medicinsk-psykologiska synpunkter på barnets soialisering med utgångspunkt från snattarens personlighet', *Nordisk Medicin*, 1956, **56**, 1221-1226. (English summary; 17 references.)

Social adjustment of the child: medicopsychological considerations with special reference to pilfering.

Social adjustment of the child is a pleasurable experience, each new advance in development being shared with the adults responsible for his training, and involves adaptation in which the child is guided by adults. The child cannot instinctively discriminate between 'mine and yours'. The personality of the pilferer is largely that of the emotionally and socially immature child. The 'unreal' life which cannot distinguish between imagination and reality is full of impulsive acts in which states of tension associated with anxiety or vindictiveness also find an outlet.

W. R. B.

CONTRIBUTORS TO THIS NUMBER

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J. LI. J. EDWARDS, M.A., LL.B., Ph.D., Reader in Law in the Queen's University of Belfast; author of 'Mens Rea in Statutory Offences' (1955), Vol. VIII, in *English Studies in Criminal Science*, published under the auspices of the Department of Criminal Science, The University of Cambridge.

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Thomas Marill. The psychological refractory phase.

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C. B. Hindley and Frank Falkner. A one-way window.

D. E. Berlyne. Conflict and choice time.

Cyril M. Franks. Personality factors and the rate of conditioning.

W. T. Singleton. An experimental investigation of sewing-machine skill.

J. M. von Wright. A note on the role of 'guidance' in learning.

D. E. Berlyne. Attention to change, conditioned inhibition (SIR) and stimulus satiation.

J. R. Smythies. A note on the fallacy of the 'phenomenological fallacy'.

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